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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE RICHARD SEEBORG

ULTRA PRODUCTS,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. C 09-4255 RS
)	
ANTEC, INC., ET AL.,)	
)	SAN FRANCISCO, CALIFORNIA
DEFENDANT.)	WEDNESDAY
)	AUGUST 11, 2010
)	

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF

GREENBERG TRAURIG, LLP
200 PARK AVENUE
FLORHAM PARK, NEW JERSEY 07932
BY: MICHAEL NICODEMA, ESQUIRE
BARRY SCHINDLER, ESQUIRE

FOR DEFENDANT

MOUNT & STOELKER, P.C.
333 WEST SAN CARLOS STREET
SAN JOSE, CALIFORNIA 95110
BY: DANIEL S. MOUNT, ESQUIRE
KEVIN M. PASQUINELLI, ESQUIRE
JING CHERNG, ESQUIRE

REPORTED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR
OFFICIAL COURT REPORTER, U.S. DISTRICT COURT

PROCEEDINGS; WEDNESDAY, AUGUST 11, 2010

THE CLERK: C 09-4255, ULTRA PRODUCTS, INC. VERSUS
ANTEC, INC. ET AL.

COUNSEL, PLEASE STATE YOUR APPEARANCES.

MR. NICODEMA: GOOD AFTERNOON, YOUR HONOR. MICHAEL
NICODEMA FOR THE PLAINTIFF ULTRA PRODUCTS.

THE COURT: GOOD AFTERNOON.

MR. MOUNT: GOOD AFTERNOON, YOUR HONOR. DANIEL MOUNT
FOR DEFENDANTS, ALONG WITH KEVIN PASQUINELLI AND JING CHERNG.

THE COURT: GOOD AFTERNOON.

ALL RIGHT. WE ARE NOW AT THE CLAIM CONSTRUCTION
POINT OF THE PROCESS. WHAT WE DISCUSSED AT THE TUTORIAL THIS
MORNING WAS THE WAY TO PROCEED, AND MY PREFERENCE WOULD BE TO GO
DISPUTED CLAIM TERM BY DISPUTED CLAIM TERM AND HAVE THE TWO
SIDES ENGAGE, RATHER THAN HAVE EACH SIDE GO THROUGH THEIR ENTIRE
SET OF POSITIONS.

SO WITH THAT, WHY DON'T WE START OUT, MR. NICODEMA,
WHAT'S THE FIRST, I BELIEVE THE FIRST TERM TO BE CONSTRUED IS --

MR. NICODEMA: YES, YOUR HONOR.

THE FIRST TERM IS "PERSONAL COMPUTERS."

THE COURT: THEN AS WE INDICATED BEFORE, THERE'S
ALSO -- THE TERM "PERSONAL COMPUTER POWER SUPPLY" IS A SEPARATE
TERM.

MR. NICODEMA: IT'S THE VERY NEXT TERM, YOUR HONOR.

1 THAT WILL BE THE NEXT TERM.

2 AND IF I MAY JUST RUN THROUGH THESE, THE HAPPY NEWS
3 IS, YOUR HONOR, THERE'S ONLY REALLY SIX TERMS --

4 **THE COURT:** RIGHT.

5 **MR. NICODEMA:** -- TO CONSTRUE: PERSONAL COMPUTER,
6 PERSONAL COMPUTER POWER SUPPLY, DIRECTLY MATED, A PLURALITY OF
7 COMPONENT CABLES, SOCKET. BUT THERE ARE TWO OTHER CLAIM
8 ELEMENTS THAT USE THE WORD "SOCKET," AND WE'RE GOING TO TAKE
9 THEMSELVES TOGETHER. ONE IS DC OUTPUT WITH SOCKET PLUG, AND
10 THERE'S TWO OTHER ELEMENTS THAT USE THE WORD "PLUG," AND WE ARE
11 GOING TO TAKE THEM TOGETHER: DC OUTPUT CABLE PLUG, DC OUTPUT
12 PLUG. AND THEN WE HAVE THE DC OUTPUT CABLE SOCKET AND DC OUTPUT
13 CABLE PLUG OR CABLE SOCKET. SO WHEN WE PUT ALL THOSE TOGETHER
14 WE ARE DOWN TO SIX.

15 **THE COURT:** OKAY.

16 LET'S PART WITH "PERSONAL COMPUTER." HERE'S
17 THE DIFFERENCE IN THE CONSTRUCTIONS. THERE'S NO
18 SURPRISE THERE. WE BOTH AGREE -- BOTH SIDES
19 AGREE THAT "PERSONAL COMPUTER" MEANS A COMPUTER
20 DESIGNED FOR AN INDIVIDUAL USER. ULTRA'S
21 CONSTRUCTION WOULD EXCLUDE SERVERS FROM THAT.
22 THE DEFENDANT'S CONSTRUCTION ADDS THE FOLLOWING
23 LANGUAGE: "BUT USABLE IN ANY APPLICATION,
24 INCLUDING PERSONAL COMPUTER SERVERS."
25 HERE'S THE SUPPORT FROM THE INTRINSIC RECORD, YOUR

1 HONOR, AND FROM COMMONLY USED DEFINITIONS THAT WE CITED IN OUR
2 BRIEF, AND FROM THE DEFENDANT'S OWN BRIEF FOR OUR CONSTRUCTION
3 OF "PERSONAL COMPUTERS." IT'S CONSISTENT WITH THE ORDINARY
4 MEANING OF "PERSONAL COMPUTER." WE PROVIDED A WEBOPEDIA --
5 THAT'S A WELL-KNOWN COMPUTER DICTIONARY ONLINE.

6 DEFINITION OF "PERSONAL COMPUTER," WE PUT THAT IN OUR
7 BRIEF, IN OUR OPENING BRIEF: A SMALL RELATIVELY INEXPENSIVE
8 COMPUTER DESIGNED FOR AN INDIVIDUAL USER.

9 OUR CONSTRUCTION IS ALSO CONSISTENT WITH THE
10 PREAMBLE, WHICH WAS ADDED BY THE PATENTEE TO DISTINGUISH OVER
11 PRIOR ART. THE PREAMBLE DID NOT ALWAYS RECITE "PERSONAL
12 COMPUTER," BUT IT WAS AMENDED TO ADD "PERSONAL COMPUTER" TO
13 DISTINGUISH OVER PRIOR ART.

14 THE PREAMBLE COMPONENTS, WHICH BOTH SIDES AGREE ARE
15 CLAIM LIMITATIONS, INCLUDE THINGS SUCH AS GAMING CARDS, AND
16 GAMING CARDS ARE COMMONLY FOUND ONLY IN PERSONAL COMPUTERS.

17 AND I HAVE A TYPO HERE, YOUR HONOR, IN THIS NEXT
18 BULLET, AND I APOLOGIZE. IT SHOULD READ:

19 "THE INTRINSIC RECORD NEVER SUGGESTED
20 ANYTHING BUT A PERSONAL COMPUTER CAN BE USED TO
21 PRACTICE THE INVENTION."

22 THERE'S NOTHING IN THE PATENT OR IN THE FILE HISTORY
23 THAT SUGGESTS THAT SERVERS OR WORK STATIONS OR THINGS USEABLE AS
24 SERVERS OR WORK STATIONS CAN BE USED IN THE PRACTICE OF THE
25 INVENTION. IT JUST SAID "PERSONAL COMPUTER."

1 AND THE PATENT NEVER REFERS TO THE TERM "SERVER" OR
2 "WORK STATION" IN CONNECTION WITH THE INVENTION.

3 ULTRA'S CONSTRUCTION OF "PERSONAL COMPUTER" IS ALSO
4 CONSISTENT WITH THE PROSECUTION HISTORY.

5 AND, YOUR HONOR, HERE'S SOMETHING WE LOOKED AT THIS
6 MORNING IN THE TUTORIAL, THE FIRST EXAMINER INTERVIEW: ONE OF
7 THE THINGS THE APPLICANTS AND THEIR COUNSEL DID WAS GIVE THE
8 EXAMINER A BRIEF PRESENTATION OF THE STATE OF THE ART AND THE
9 BACKGROUND OF THE INVENTION THAT INCLUDED A HISTORY OF PERSONAL
10 COMPUTERS, THEIR CONSTRUCT AND USE OF STANDARDIZED COMPONENTS,
11 INCLUDING POWER SUPPLIES. AND THAT'S WHAT I WAS TALKING ABOUT,
12 YOUR HONOR, THIS MORNING WHEN I PUT A PRIOR ART POWER SUPPLY, AN
13 ANTEC POWER SUPPLY AND AN ULTRA POWER SUPPLY IN THE SAME
14 COMPUTER SAYS AND SHOWED THEY WERE STANDARDIZED COMPONENTS.
15 THOSE ARE NOT FEATURES OF SERVER OR OF WORK STATIONS.

16 **THE COURT:** COULD YOU ANGLE THE PROJECTOR TO THE
17 RIGHT A LITTLE BIT? MY PROBLEM IS MY COMPUTER SCREEN IS KIND OF
18 BLOCKING MY VIEW. IF IT COULD BE SO THE PICTURE SHOWS UP TO THE
19 RIGHT, TO MY RIGHT.

20 THAT'S BETTER. A LITTLE BIT. THE FURTHER RIGHT YOU
21 CAN GO, THAT'S BETTER.

22 **MR. NICODEMA:** IS IT IS BETTER WE HAVE A LITTLE 3-D
23 GOING ON?

24 **THE COURT:** YES. THANK YOU.

25 **MR. NICODEMA:** ANOTHER IMPORTANT POINT, YOUR HONOR, I

1 WANTED TO MAKE FROM THE PROSECUTION HISTORY WAS THIS DECLARATION
2 THAT WAS SUBMITTED BY MR. GEROW. HE SUBMITTED A DECLARATION IN
3 SUPPORT OF PATENTABILITY OF THE INVENTION. AND HE TALKED ABOUT
4 THE MODDER MARKET, WHICH IS TO WHAT THE INVENTION IS DIRECTED.

5 ONE OF THE THINGS MR. GEROW SAID IN HIS DECLARATION,
6 HE TALKED ABOUT THIS ACTIVE MARKET OF COMPUTER USERS WHO
7 PURCHASE PERSONAL COMPUTER HARDWARE COMPONENTS, INCLUDING POWER
8 SUPPLIES, IN ORDER TO CONSTRUCT CUSTOM PERSONAL COMPUTERS. THIS
9 IS NOT DONE WITH SERVERS. THIS IS DONE WITH PERSONAL COMPUTERS
10 THAT ARE DESIGNED FOR INDIVIDUAL USERS.

11 NOW, IN THIS SLIDE WE PUT SOME INFORMATION TO SHOW --
12 MORE INFORMATION TO SHOW THAT PERSONAL COMPUTERS ARE NOT SERVERS
13 OR WORK STATIONS AS ARGUED BY THE DEFENDANTS.

14 YOUR HONOR WAS ASKING THIS MORNING WHETHER THE
15 PARTIES HAD SUBMITTED A DEFINITION OF "SERVER." IN OUR BRIEF,
16 IN OUR OPENING BRIEF, WE SUBMITTED WIKIPEDIA (SIC) DEFINITIONS
17 OF "PERSONAL COMPUTER," WHICH I SHOWED IN THE PREVIOUS SLIDE:
18 "A SMALL, RELATIVELY INEXPENSIVE COMPUTER DESIGNED FOR
19 INDIVIDUAL USE." AND ALSO A DEFINITION OF SERVER:

20 "A COMPUTER OR DEVICE ON A NETWORK THAT
21 MANAGES RESOURCES."

22 THEY HAVE DIFFERENT ORDINARY MEANINGS.

23 AND THE DEFENDANTS ALSO DEFINED WHAT A SERVER WAS IN
24 THEIR BRIEF. SECOND BULLET POINT. THEY SAID THAT SERVERS ARE
25 NOT PERSONAL COMPUTERS PER SE:

1 "BECAUSE SERVERS ARE DESIGNED FOR
2 MULTI-USER APPLICATIONS AND MANY TIMES INCLUDE
3 SPECIAL FEATURES IN SUPPORT OF THIS, INCLUDING
4 LARGER STORAGE, FASTER NETWORKING AND, OF
5 COURSE, RACK MOUNTING."

6 AND I WANT TO FOCUS ON THE WORDS "MANY TIMES" IN
7 CONNECTION WITH RACK MOUNTING.

8 IF THERE WAS SOME INDICATION THIS MORNING FROM THE
9 DEFENDANTS THAT SERVERS ARE ONLY RACK MOUNTED, THAT'S NOT THE
10 CASE. THEIR OWN DEFINITION DOESN'T SAY THAT. PLUS, THERE'S
11 NOTHING IN THE INTRINSIC RECORD OF THE PATENT TO INDICATE THAT
12 SERVERS WERE ONLY RACK MOUNTED. AND, IN ANY EVENT, EVEN RACK
13 MOUNTED SERVERS WOULD BE INDIVIDUAL COMPUTERS. SO YOU HAVE TO
14 LOOK AT THOSE AND SAY: ARE THEY SERVERS, OR ARE THEY PC'S?
15 THEY'RE SERVERS.

16 **THE COURT:** DURING THE TUTORIAL, THE DEFENSE WAS
17 SEVERAL TIMES SUGGESTING THAT THE FOCUS IN CONSIDERING THE
18 SERVER ISSUE IS TO -- IS ON FUNCTIONALITY, YOU KNOW, THEY -- CAN
19 A PERSONAL COMPUTER EFFECTIVELY, AS I UNDERSTOOD THEIR ARGUMENT,
20 CAN IT FUNCTION AS A SERVER OR NOT, AND THAT SHOULD BE ONE OF
21 THE ASPECTS THAT I FOCUS ON. WHY IS THAT WRONG?

22 **MR. NICODEMA:** THAT'S WRONG, BECAUSE, YOUR HONOR, YOU
23 HAVE TO LOOK AT WHAT THE PATENTEE SAID HIS INVENTION WAS.

24 THE PATENTEE FOCUSED ON THE STRUCTURE OF THE COMPUTER
25 AND NOT THAT IT MAY BE USED AS SOMETHING ELSE LATER, BECAUSE

1 LET'S LOOK AT THE DEFENDANT'S DEFINITION WHERE THEY SAY SERVERS
2 ARE NOT PERSONAL COMPUTERS BECAUSE OF THESE THINGS: THEY ARE
3 DESIGNED FOR MULTI-USER APPLICATIONS AND MANY TIMES INCLUDE
4 SPECIAL FEATURES SUCH AS LARGER STORAGE, FASTER NETWORKING, ET
5 CETERA.

6 YOU ARE NOT TAKING A PERSONAL COMPUTER, PUTTING IT
7 HERE AND SAY: LET'S USE IT FOR THE GAMING INDUSTRY; PUTTING IT
8 OVER THERE AND SAY: LET'S USE THIS MACHINE AS A SERVER. YOU'D
9 HAVE TO MODIFY IT. YOU HAVE TO CHANGE IT. ONCE YOU REBUILD IT,
10 IT'S NOT A PERSONAL COMPUTER ANYMORE, IT'S A SERVER.

11 THOSE MACHINES THEY HAVE OVER THERE, THE IBM, THE HP,
12 AND THE MAC, THEY HAVE -- AND THIS IS NOT EVEN IN THE RECORD.
13 I'M GOING A LITTLE BIT OFF THE RESERVATION HERE BECAUSE THIS
14 STUFF ISN'T EVEN IN THE INTRINSIC RECORD OF THE PATENT.

15 BUT THEY HAVE SPECIAL FEATURES THAT MAKE THEM
16 SERVERS, CONNECTING TO OTHER SERVER COMPUTERS. THEY DON'T HAVE
17 GAMING CARDS. THEY ARE NOT THE TYPE OF THINGS THAT ARE USED BY
18 INDIVIDUALS. THEY ARE DESIGNED FOR MULTI-USERS.

19 THIS IS WHAT THE DEFENDANT'S OWN BRIEF SAID A SERVER
20 WAS: IT WAS DESIGNED FOR MULTI-USERS AND HAS SPECIAL FEATURES
21 TO SUPPORT THAT USE.

22 AND THE DEFENDANT'S OWN PUBLICATIONS RECOGNIZE THE
23 MODDER MARKET, TO WHICH THE PC OF THE INVENTION ARE DIRECTED,
24 AND SERVER WORK STATION MARKETS AS DISTINCT MARKETS.

25 WE HAVE SOME LITTLE SCREEN SHOTS FROM THEIR

1 DOCUMENTS. ON THE LEFT IS A TITAN 650 SERVER CASE THAT ANTEC
2 MAKES, DEFENDANT ANTEC. AND IN THAT DOCUMENT DESCRIBING THE
3 PRODUCT, IT TALKS ABOUT THE SERVER AND WORK STATION MARKET.
4 OKAY?

5 ON THE RIGHT --

6 **THE COURT:** IS THAT SOMETHING THAT I CAN TAKE INTO
7 ACCOUNT AT CLAIM CONSTRUCTION, WHAT THE MARKET REALITIES ARE IN
8 TERMS OF HOW -- I MEAN, CAN I -- IS THAT A LEGITIMATE THING TO
9 TAKE INTO CONSIDERATION?

10 **MR. NICODEMA:** THE MARKET REALITIES?

11 **THE COURT:** YEAH.

12 **MR. NICODEMA:** YOU CAN TAKE THAT INTO ACCOUNT AS MUCH
13 AS YOU CAN TAKE INTO ACCOUNT ANYTHING THAT'S SITTING ON THAT
14 TABLE.

15 **THE COURT:** YOU DON'T WANT ME TO TAKE THAT INTO
16 ACCOUNT EITHER.

17 BUT ISN'T THE PROCESS: I'M TRYING TO GLEAN THE
18 MEANING OF THESE TERMS BY LOOKING AT THE PLAIN MEANING OF THE
19 TERM, AND BY LOOKING AT REFERENCE TO DICTIONARIES AND, YOU KNOW,
20 SOME EXPERT SUBMISSIONS ON WHAT THE ORDINARY PERSON IN THE ART
21 WOULD UNDERSTAND THOSE TERMS TO MEAN? BUT CAN I THEN SAY:
22 WELL, AND THE MARKETPLACE REALITIES ARE THESE ARE TWO
23 SEPARATE -- YOU HAVE A DISTINCT MARKET FOR SERVERS AND A
24 DISTINCT MARKET FOR PC'S AND, THEREFORE, I'M GOING TO INTERPRET
25 A PC TO EXCLUDE SERVERS. CAN I DO THAT?

1 **MR. NICODEMA:** I UNDERSTAND YOUR QUESTION, YOUR
2 HONOR. AND TO THE EXTENT -- YES, THESE ANTEC CITATIONS ARE
3 EXTRINSIC EVIDENCE.

4 TO THE EXTENT THAT THEY RELATE TO THE PROBLEMS
5 DISCUSSED IN THE INTRINSIC RECORD THAT THE INVENTION WAS
6 DESIGNED TO OVERCOME, THE PROBLEMS THAT MODDERS HAD WITH CABLE
7 CLUTTER AND REDUCED AIRFLOW, AND THE FACT THAT THE PATENT
8 CONTAINS NO MENTIONS OF SERVERS OR WORK STATIONS BEING USED IN
9 THE PRACTICE OF THE INVENTIONS, TO THAT EXTENT I THINK YOU CAN
10 TAKE INTO ACCOUNT WHAT ANTEC ITSELF IS TAKING ABOUT THEIR OWN
11 PRODUCTS.

12 YOUR HONOR, BUT YOUR FIRST COURSE OF ACTION, ALWAYS,
13 ALWAYS, IN CLAIM CONSTRUCTION IS THE INTRINSIC RECORD OF THE
14 PATENT.

15 AND IT'S UNMISTAKABLE: THE EXAMINER MADE THE
16 PATENTEE LIMIT THE CLAIM TO PERSONAL COMPUTER TO OVERCOME THE
17 PRIOR ART. NOBODY IS GOING TO ARGUE OVER THAT.

18 NOW LET'S LOOK AT THE DEFENDANT'S CONSTRUCTION A
19 LITTLE BIT. I THINK IT'S SELF CONTRADICTING THE WAY THEY WROTE
20 IT. THEY SAY THAT -- THEY AGREE WITH US THAT A PERSONAL
21 COMPUTER IS SOMETHING DESIGNED FOR THE INDIVIDUAL USER, BUT
22 USEABLE IN ANY APPLICATION INCLUDING SERVERS.

23 WELL, THE SECOND PART OF THEIR CONSTRUCTION IS A
24 CONCESSION THAT THESE OTHER USES AND APPLICATIONS ARE NOT FOR
25 INDIVIDUAL USERS, SO IT KIND OF IS AT ODDS WITH THE FIRST PART

1 OF THEIR CONSTRUCTION.

2 AND THEY DEFINE "SERVER" THEMSELVES IN THEIR CLAIM
3 CONSTRUCTION BRIEF AS SOMETHING DESIGNED FOR MULTI-USERS AND
4 HAVING SPECIAL FEATURES, WHICH PERSONAL COMPUTERS DO NOT.

5 JUST BRIEFLY, THE NON-EVIDENCE OF THE MODEL IBM 60,
6 95, THE HP, AND THE MAC QUADRA, I WENT OVER THIS THIS MORNING,
7 YOUR HONOR, THEY ARE CHARACTERIZED AS SERVERS. THEY DO NOT HAVE
8 OFF-THE-SHELF SYSTEM ARCHITECTURE, AND THE POWER SUPPLIES ARE
9 MASSIVE TO COINCIDE WITH THE DIFFERENT STORAGE, COMPUTING, AND
10 NETWORKING REQUIREMENTS OF THOSE MACHINES.

11 AND THAT'S IT.

12 **THE COURT:** OKAY.

13 **MR. MOUNT:** THANK YOU, YOUR HONOR.

14 **THE COURT:** YOU CAN ACTUALLY STRAIGHTEN THAT OUT. I
15 REALIZED THE EASIER THING TO DO WAS MOVE MY MONITOR.

16 **MR. MOUNT:** IS THAT LEGIBLE FOR YOU?

17 **THE COURT:** IT'S FINE NOW WITH THE MONITOR OUT OF THE
18 WAY. WHATEVER IS THE CONVENIENT WAY TO DO IT, GO AHEAD.

19 **MR. MOUNT:** ACTUALLY, WE HAD APPROACHED OURS
20 DIFFERENTLY.

21 I THINK THE COURT BEGAN TO FOCUS CORRECTLY ON THE
22 QUESTION OF: WHY ARE THIS -- THIS DISCUSSION ABOUT MARKET
23 SEGMENT NOT REALLY BEING AN APPROPRIATE AREA OF INQUIRY. THE
24 QUESTION OF WHAT THE PERSONAL COMPUTER MEANS, YOU START WITH THE
25 CLAIM LANGUAGE ITSELF.

1 INTERESTINGLY, BOTH SIDES AGREE ON THE FIRST PART OF
2 THE DEFINITION THAT IS A -- WHICH IS:

3 "A COMPUTER DESIGNED FOR AN INDIVIDUAL
4 USER."

5 THAT'S PROBABLY A PRETTY GOOD DEFINITION. AFTER THAT
6 BOTH SIDES GO TO GENERAL QUARTERS, ONE TRYING TO INCLUDE
7 SERVERS, ONE TRYING TO EXCLUDE SERVERS, AND A GOOD ARGUMENT
8 COULD BE MADE THAT, FRANKLY, WHERE THE PARTIES AGREE MIGHT BE AN
9 APPROPRIATE PLACE TO STOP, BECAUSE BEYOND THAT WE ARE ADDING
10 LIMITATIONS TO THESE CLAIMS THAT ARE NOT REQUIRED BY THE SPEC.

11 **THE COURT:** LET ME STOP YOU ON THAT FOR A MOMENT.

12 MR. NICODEMA, WHY SHOULD WE BE FUSSING AROUND WITH
13 SERVER IN/SERVER OUT AND WHY SHOULDN'T THE DEFINITION BE WHAT I
14 THINK IS A PRETTY GENERIC DEFINITION: "A COMPUTER DESIGNED FOR
15 AN INDIVIDUAL USER."

16 **MR. NICODEMA:** YOU SHOULDN'T. WE'LL TAKE THAT
17 DEFINITION. BOTH SIDES AGREE.

18 **MR. MOUNT:** BOTH SIDES HAD AGREED ON THAT DEFINITION.

19 **MR. NICODEMA:** WE SHOULDN'T. OUR CONSTRUCTION CAME
20 ON THE HEELS OF THEIR CONSTRUCTION WHERE THEY PUT THE "BUT
21 USEABLE" LANGUAGE IN THERE. WE WANTED IT TO BE JUST THE FIRST
22 PART OF IT THAT BOTH SIDES AGREE ON: "DESIGNED FOR AN
23 INDIVIDUAL USER."

24 **MR. MOUNT:** THE IMPORTANT ISSUE WILL HAVE TO DO WITH
25 THE SCOPE OF PRIOR ART. WE BELIEVE THE DEVICES THAT HAVE BEEN

1 SHOWN, WHETHER THEY'RE \$3,000 OR \$1,000, ARE STILL COMPUTERS FOR
2 AN INDIVIDUAL USER. AND WE BELIEVE THAT ADDING FUNCTIONAL USES
3 ADDS PERPLEXITY.

4 **THE COURT:** AN ARGUMENT YOU WOULD MAKE TO THE JURY, I
5 PRESUME.

6 WELL, IS THERE ANY PROBLEM WITH OUR JUST USING THAT
7 DEFINITION AND NOT EITHER EXCLUDING OR INCLUDING THE SERVER
8 CONCEPT IN THE DEFINITION OF "PERSONAL COMPUTER"?

9 **MR. NICODEMA:** NO PROBLEM, YOUR HONOR.

10 **THE COURT:** I'M QUITE COMFORTABLE WITH: "A COMPUTER
11 DESIGNED FOR AN INDIVIDUAL USER."

12 **MR. NICODEMA:** THEN WE SHOULD STOP THERE, YOUR HONOR.

13 **THE COURT:** ALL RIGHT. LET'S DO THAT.

14 **MR. MOUNT:** ACTUALLY, I'VE GOT LOTS OF OTHER COMMENTS
15 TO MAKE, BUT I THINK THEY MAY BE UNNECESSARY. SO, WE'LL SPARE
16 FURTHER DIALOGUE, AND WE CAN TALK ABOUT THE NEXT CLAIM LANGUAGE
17 ISSUE.

18 **MR. NICODEMA:** LET ME FIND MY LITTLE CLICKER HERE.

19 **THE COURT:** BY THE WAY, THERE WOULD BE NO SHAME IN
20 OUR DOING THESE IN EVERY ONE OF THESE. DON'T FEEL YOU HAVE TO
21 FIND PLACES TO FIGHT ABOUT.

22 **MR. NICODEMA:** LIKE I TOLD JUDGE LLOYD YESTERDAY, I
23 JUST FLEW IN ALL THE WAY FROM NEW JERSEY, YOU HAVE TO LET ME SAY
24 SOMETHING.

25 **MR. MOUNT:** ON THE NEXT ITEM, YOUR HONOR, I THINK WE

1 HAVE SOME OF THE SAME THING GOING. THERE'S AGREEMENT ABOUT THE
2 FIRST --

3 **THE COURT:** JUST SO THAT I'M CLEAR, WE ARE ON
4 "PERSONAL COMPUTER POWER SUPPLY" NOW?

5 **MR. MOUNT:** AND THERE'S AGREEMENT, EXCEPT THEY WANT
6 TO ADD AN ADDITIONAL PHRASE WHICH WE THINK IS UNNECESSARY AND
7 UNSUPPORTED.

8 **MR. NICODEMA:** THIS ONE IS A LITTLE DIFFERENT, YOUR
9 HONOR, BECAUSE OUR POSITION IS THERE WAS AN EXPRESS PROSECUTION
10 HISTORY DISCLAIMER.

11 SO RATHER THAN -- RATHER THAN FIGHT LATER ON ABOUT
12 THAT DISCLAIMER, IT'S PROBABLY PRUDENT THAT, IF YOUR HONOR
13 AGREES WITH US ABOUT THE DISCLAIMER, TO PUT IT IN THE
14 CONSTRUCTION, AND I'M GOING TO SHOW YOU A COUPLE OF SLIDES
15 CONCERNING THAT DISCLAIMER.

16 NOW, HERE ARE FOUR EXCERPTS FROM THE PROSECUTION
17 HISTORY. WHERE THE PATENTEE DISCLAIMED ALL REDUNDANT POWER
18 SUPPLIES. HERE'S THE ARGUMENT HERE. WE SAY -- ULTRA SAYS THE
19 PATENTEE, THE INVENTORS, DISCLAIMED ALL REDUNDANT POWER
20 SUPPLIES. THE DEFENDANTS SAY THAT THE PATENTEES ONLY DISCLAIMED
21 A SUBCLASS RACK MOUNTED REDUNDANCE OF POWER SUPPLIES. I THINK
22 WE HAVE THE MUCH BETTER OF THE ARGUMENT HERE WHEN YOU READ THE
23 STATEMENTS THAT THE APPLICANTS ACTUALLY MADE.

24 FOR EXAMPLE, IN THE FIRST STATEMENT, THEY UNDERLINED
25 "RACK MOUNTED," BUT SEPARATELY THEY UNDERLINED "REDUNDANT POWER

1 SUPPLIES."

2 IN THE SECOND STATEMENT, IT'S VERY CLEAR.

3 "THE WISCOMBE PATENT THEN ADDRESSES THE
4 PROBLEM WITH 'REDUNDANT POWER SUPPLIES,' NOT
5 PERSONAL COMPUTER POWER SUPPLIES."

6 THAT'S A DIRECT QUOTE.

7 THE PATENTEE DID NOT SAY THE WISCOMBE PATENT THEN
8 ADDRESSES THE PROBLEM WITH RACK MOUNTED REDUNDANT POWER
9 SUPPLIES. HE DIDN'T SAY THAT. HE SAID -- HE USED REDUNDANT
10 POWER SUPPLIES AS A CLASS.

11 **THE COURT:** THIS WHICH, BY THE WAY, JUST TO PUT IT IN
12 CONTEXT, THIS WAS IN RESPONSE TO THE PATENT EXAMINER SAYING,
13 WITH RESPECT TO THE WISCOMBE PATENT, SAYING IT'S PRIOR ART
14 AND --

15 **MR. NICODEMA:** YES, SIR.

16 **THE COURT:** AND THIS IS THE RESPONSE TO THAT?

17 **MR. NICODEMA:** THAT'S ABSOLUTELY CORRECT, YOUR HONOR.

18 AND THE THIRD STATEMENT, HE'S TALKING ABOUT WISCOMBE
19 AGAIN, BECAUSE THAT SEEMED TO BE A PRIOR ART INTEREST TO THE
20 EXAMINER.

21 "CONSEQUENTLY, TO ADDRESS THE PROBLEM WITH
22 'REDUNDANT POWER SUPPLIES,' THE WISCOMBE
23 PATENT ... "

24 AND THEN IT GOES ON.

25 AGAIN, THE PATENTEE IS REFERRING TO REDUNDANT POWER

1 SUPPLIES AS A CLASS AND NOT JUST THE SUBCLASS OF RACK MOUNTED
2 REDUNDANT POWER SUPPLIES.

3 AND THEN THE LAST STATEMENT, IT'S CRYSTAL CLEAR.

4 "THE WISCOMBE PATENT RELATES TO A REDUNDANT
5 POWER SUPPLY."

6 NO QUALIFICATION AS TO THE TYPE OF REDUNDANT POWER
7 SUPPLY OR THE USE OF THE REDUNDANT POWER SUPPLY. THE PATENTEE
8 WAS DISCLAIMING A PARTICULAR CLASS OF POWER SUPPLIES IN SEEKING
9 HIS INVENTION. THAT'S WHY, YOUR HONOR, WE BELIEVE THERE'S A
10 CLEAR AND UNMISTAKABLE DISCLAIMER. THAT'S WHY, YOUR HONOR, WE
11 BELIEVE THE ENTIRE CLASS OF REDUNDANT POWER SUPPLIES SHOULD BE
12 EXCLUDED FROM THE COURT'S CONSTRUCTION OF "PERSONAL COMPUTER
13 POWER SUPPLY."

14 **THE COURT:** OKAY. MR. MOUNT.

15 **MR. NICODEMA:** WAIT. DID I HAVE MORE? I THINK I
16 HANDLED THIS. I CEDE THE FLOOR TO MR. MOUNT.

17 **THE COURT:** GO AHEAD.

18 **MR. MOUNT:** THERE WAS NO MODIFICATION TO CLAIM
19 LANGUAGE IN RESPONSE TO THIS WISCOMBE PATENT, AND THESE REMARKS
20 WERE MADE WITHOUT MODIFICATION. SO THE PHRASE "PERSONAL
21 COMPUTER POWER SUPPLY" WAS NOT ADOPTED IN RESPONSE.

22 THESE ARE SIMPLY -- WHAT HE JUST RAN THROUGH WITH YOU
23 WAS ARGUMENT MADE BEFORE THE -- BEFORE THEY HAD THE EXAMINATION
24 WITH THE INTERVIEW.

25 THEY WERE DESCRIBING WISCOMBE, AND THE WISCOMBE

1 PATENT IS IN THE RECORD AS THE '854 PATENT, AND WISCOMBE IS
2 CLEARLY A POWER SUPPLY. IT IS A REDUNDANT POWER SUPPLY WITH
3 SOME INTERVENING STRUCTURES THAT ARE DISTINGUISHED AS WELL. BUT
4 THAT PATENT ITSELF MAKES IT QUITE CLEAR THAT THE WISCOMBE PATENT
5 WAS A REDUNDANT POWER SUPPLY IN A RACK MOUNTED COMPUTER SYSTEM,
6 AND THAT'S FOUND AT COLUMN 1, LINES 28 TO 31 OF THE WISCOMBE
7 PATENT.

8 SO ALL THE ARGUMENTS THAT THEY JUST CITED TO YOU WERE
9 ARGUMENTS MADE IN DISTINGUISHING THEMSELVES FROM THE WISCOMBE
10 DEVICE, WHICH WAS A RACK MOUNTED POWER SUPPLY. I THINK REST IS
11 HANDLED IN OUR PAPERS.

12 **MR. NICODEMA:** YOUR HONOR, ONE --

13 **THE COURT:** GO AHEAD.

14 **MR. NICODEMA:** -- BRIEF RESPONSE TO THAT.

15 UNDER THE LAW OF PROSECUTION HISTORY DISCLAIMER, IT
16 DOESN'T MATTER WHETHER YOU AMEND THE CLAIMS. I CAN SEE MYSELF
17 STARTING TO TELL A WAR STORY.

18 STANDING BEFORE JUDGE NEWMAN IN THE FEDERAL CIRCUIT
19 AND SAYING: YES, THE PATENTEE SAID 17 TIMES IN THE PROSECUTION
20 HISTORY: MY INVENTION IS THIS AND NOT THAT, BUT HE DIDN'T PUT
21 IN THE CLAIMS. AND SHE SAID: SO WHAT, YOU DON'T HAVE TO.

22 ALSO, PROSECUTION HISTORY DISCLAIMER DEPENDS ON WHAT
23 THE PATENTEE SAYS AND NOT WHETHER THE EXAMINER RELIES UPON IT TO
24 ISSUE THE CLAIMS. THAT'S ONE OF THE DEFENDANT'S OWN CASE
25 CITATIONS IN THEIR FOOTNOTE. I THINK IT'S THE BAYER, B-A-Y-E-R,

1 CASE.

2 **THE COURT:** MR. MOUNT?

3 **MR. MOUNT:** IT HAS TO BE CLEAR AND UNMISTAKABLE.

4 WHAT THEY'VE DONE IS SHOWN YOU FOUR REFERENCES. I HAVE TO GO
5 BACK TO THEIR PAGES. THEY'VE GIVEN YOU FOUR REFERENCES WHERE
6 THEY'RE TALKING ABOUT WISCOMBE. IN TWO OF THEM, I BELIEVE
7 THERE'S REFERENCE TO WISCOMBE BEING THE RACK MOUNTED SERVER
8 DEVICE WITH REDUNDANT POWER SUPPLIES, AND THAT'S WHAT THEY WERE
9 REFERRING TO.

10 IF WE WERE ON THE OTHER SIDE OF THE ARGUMENT AND THEY
11 WERE TRYING TO -- THEY WOULD NOT ACKNOWLEDGE THAT THE LANGUAGE
12 THERE IS CLEAR AND UNMISTAKABLE, WHAT THEY WERE GETTING AWAY
13 FROM: WAS IT REDUNDANT POWER SUPPLIES OR REDUNDANT POWER
14 SUPPLIES IN THE RACK MOUNTED SETTING?

15 **THE COURT:** ON JUST THE LEGAL QUESTION THAT
16 MR. NICODEMA BRINGS UP, THE NOTION THAT -- IF THE LANGUAGE --
17 THE CLAIM LANGUAGE DOESN'T CHANGE, DO YOU AGREE WITH HIM THAT,
18 AS A MATTER OF LAW, I CAN TAKE INTO ACCOUNT STATEMENTS BY THE
19 APPLICANT EVEN IF IT DOESN'T RESULT IN A CHANGE?

20 **MR. MOUNT:** YOU CAN TAKE THAT INTO ACCOUNT.

21 **THE COURT:** SO YOU AGREE ON THE LAW. YOU SIMPLY
22 THINK WHEN I GO BACK AND LOOK AT THAT COLLOQUY BETWEEN THE
23 EXAMINER AND THE APPLICANT, THAT I'LL DETERMINE THAT IT WASN'T
24 AS ALL ENCOMPASSING AS THEY'RE SUGGESTING.

25 **MR. MOUNT:** CORRECT. AND THE TEST IS CLEAR AND

1 UNMISTAKABLE. WERE THEY CLEAR AND UNMISTAKABLY GETTING AWAY
2 FROM ANY REDUNDANT POWER SUPPLIES, OR COULD THEY HAVE SAID: WE
3 WERE GETTING AWAY FROM REDUNDANT POWER SUPPLIES IN THE RACK
4 MOUNTED SERVER SETTING, BECAUSE THAT'S WHAT -- THAT'S WHAT THE
5 FILE WILL SHOW YOU. THEY WERE GETTING AWAY IN THAT SETTING.

6 **THE COURT:** ARE THOSE EXCERPTS THAT PLAINTIFF
7 PROVIDED, IS THAT THE UNIVERSE OF DISCUSSION ON THIS QUESTION IN
8 THE HISTORY?

9 **MR. MOUNT:** I THINK IN OUR OPENING BRIEF, WE DID
10 IDENTIFY OTHER PORTIONS THAT RELATED --

11 **THE COURT:** OKAY. I WILL GO BACK. OKAY. ALL RIGHT.
12 I WILL GO BACK AND LOOK AT THAT.

13 ANYTHING MORE ON PERSONAL COMPUTER POWER SUPPLY?

14 **MR. NICODEMA:** NO, YOUR HONOR. I THINK WE IDENTIFIED
15 IN THIS SLIDE, AND IN OUR BRIEF, AND IN RESPONDING TO THE
16 DEFENDANT'S BRIEF ALL OF THE PERTINENT DISCLAIMER STATEMENTS AND
17 OTHER STATEMENTS MADE ABOUT WISCOMBE. AND WE'RE ON TO NUMBER
18 THREE ALREADY.

19 **THE COURT:** I'M JUST DELIGHTED. BUT I DON'T WANT TO
20 GET MY HOPES UP, BECAUSE I KNOW WE CAN ALWAYS SLOW DOWN.

21 **MR. NICODEMA:** BE POSITIVE, YOUR HONOR. BE POSITIVE.

22 "DIRECTLY MATED." HERE'S THE FIGHT AGAIN: WE SAY --
23 ULTRA SAYS, DIRECTLY MATED MEANS, "TO JOIN OR FIT TOGETHER
24 WITHOUT ANY INTERVENING STRUCTURE."

25 THE DEFENDANTS WANT IT TO BE NARROWED TO MEAN, "TO

1 JOIN OR FIT TOGETHER WITHOUT ANY INTERVENING CABLES."

2 AND HERE'S THE SUPPORT FOR ULTRA'S CONSTRUCTION OF
3 "DIRECTLY MATED." I DON'T THINK EVEN THE DEFENDANTS CAN ARGUE
4 WITH THIS. THE ORDINARY MEANING OF "TO MATE" IS TO JOIN OR FIT
5 TWO THINGS TOGETHER. IF YOU ARE JOINING OR FITTING TWO THINGS
6 TOGETHER, THERE'S NOTHING IN BETWEEN.

7 AND HERE'S WHAT HAPPENED IN THE PROSECUTION HISTORY;
8 HERE ARE THE TWO STATEMENTS THAT WE HIGHLIGHTED IN OUR BRIEF.
9 ONE WAS IN THE MAY 15, 2006 REQUEST FOR CONTINUED EXAMINATION.
10 THE PATENTEE DISTINGUISHED WISCOMBE BECAUSE THE CONNECTORS,
11 WHICH ARE PLUGGED INTO WISCOMBE'S RESPECTIVE DC OUTPUT SOCKETS
12 WERE THROUGH AN INTERVENING PARALLELING TYPE CIRCUIT BOARD 120.

13 OUR POSITION ON THAT YOUR HONOR, THAT'S A LOT OF
14 STRUCTURE. THAT'S NOT JUST CABLES.

15 SO THERE WAS A BROAD DISCLAIMER THERE BECAUSE THAT
16 WAS ALL THE STUFF THAT WAS INTERVENING, THIS PARALLELING TYPE
17 CIRCUIT BOARD, AND NOT JUST CABLES.

18 THE PATENTEE NEVER SAID IN THE PROSECUTION THAT
19 ULTRA'S CLAIMS WERE DIFFERENT FROM WISCOMBE OR ANYBODY ELSE JUST
20 BECAUSE OF INTERVENING CABLES. THEY NEVER SAID THAT, AND THE
21 EXAMINER NEVER SAID THAT.

22 HERE'S A SECOND CITATION WE HAVE WITH THE PATENTEE
23 DISTINGUISHING WISCOMBE AGAIN. HE SAID:

24 "THE WISCOMBE PATENT TEACHES AWAY FROM THE
25 CLAIMED ELEMENT THAT THE SAME CABLE THAT HAS A

1 FIRST END THAT HAS A PLUG IS DIRECTLY MATED."

2 DIRECTLY MATED, PERIOD. OKAY? HE WASN'T LIMITING IT
3 TO CABLES. HE DIDN'T SAY THAT THE INTERVENING STRUCTURE MUST BE
4 A CABLE. IT WAS ANOTHER BROAD -- BROAD WORDS OF DISCLAIMER.

5 AND HERE'S OUR POSITION ON THE DEFENDANT'S ARGUMENT.
6 THE DEFENDANT'S ARGUMENT IS INCONSISTENT WITH THE ORDINARY
7 MEANING OF THE WORD "MATE." THE DEFENDANTS IN THEIR BRIEF,
8 AGAIN, THEY SAID: HEY, WHOA, WHOA, WHAT ARE YOU GUYS DOING?

9 ULTRA IS RELYING ON WHAT ULTRA SAID DURING THE
10 PROSECUTION. SO WHAT'S WRONG WITH THAT? I THINK WE JUST HEARD
11 MR. MOUNT SAY: IT DOESN'T MATTER WHAT THE EXAMINER DOES OR SAYS
12 LATER; IT'S WHAT THE PATENTEE SAYS THAT COUNTS.

13 THE CLAIMS DON'T HAVE TO BE AMENDED, THE EXAMINER
14 DOESN'T HAVE TO RELY ON THE ARGUMENTS TO ISSUE THE PATENT. IF
15 THE PATENTEE MAKES CLEAR AND UNMISTAKABLE EXPRESSIONS OF
16 DISCLAIMER, THAT'S WHAT RULE THE DAYS.

17 **THE COURT:** AS LONG AS THEY'RE CLEAR AND
18 UNMISTAKABLE.

19 **MR. NICODEMA:** BINGO. THAT'S CORRECT, YOUR HONOR.

20 NOW, THE EXAMINER'S COMMENTS ON LAYTON, ONE OF THE
21 THINGS THAT THE DEFENDANTS SAY IN THEIR BRIEF IS: LET'S LOOK AT
22 THE EXAMINER; HE DIDN'T COMMENT ON ANY OF THE PATENTEE'S
23 ARGUMENTS ON WISCOMBE. HE SAID THE PATENT WAS VALID OVER LAYTON
24 AND LAYTON HAS INTERVENING CABLES. THE ONE THING THEY DIDN'T
25 TELL YOU WAS LAYTON WAS A REFERENCE THAT WAS NEVER APPLIED TO

1 THE CLAIMS. IT WASN'T.

2 AND WHAT THE EXAMINER SAYS DOESN'T MATTER. HE COULD
3 TOTALLY IGNORE THE PATENTEE'S ARGUMENTS ON WISCOMBE, AND IT
4 DOESN'T MATTER AS LONG AS THE PATENTEE MADE A CLEAR AND
5 UNMISTAKABLE DISCLAIMER.

6 AND EVEN IN THE PATENTEE'S COMMENTS ON LAYTON, IF YOU
7 LOOK AT THE QUOTE FROM THE DEFENDANT'S CLAIM CONSTRUCTION BRIEF
8 YOUR HONOR, THE EXAMINER EVEN NEVER SAYS THAT "DIRECTLY MATED"
9 IS LIMITED TO THE ABSENCE OF INTERVENING CABLES.

10 AND -- GO AHEAD.

11 **MR. MOUNT:** THANK YOU.

12 YOUR HONOR, THE POSITION I THINK IS REASONABLY WELL
13 PRESENTED IN OUR BRIEF ON THIS MATTER. THE REFERENCE WAS TO
14 LAYTON THEY WERE OVERCOMING. LAYTON WAS DISCUSSED BY THE
15 EXAMINER, I THINK THAT MATTERS. AND THE ONLY DIFFERENTIAL WITH
16 RESPECT TO LAYTON HAD THESE INTERVENING CABLES. THAT'S HAWAII
17 WE THINK WAS INTENDED.

18 **THE COURT:** THE CONTEXT OF THE DISCUSSION, YOU THINK,
19 WILL REFLECT THAT CABLES WAS WHAT THEY WERE TALKING ABOUT?

20 **MR. MOUNT:** YES, THERE WERE INTERVENING CABLES THAT
21 WERE SHOWN. I THINK I CAN SHOW YOU ON THE NEXT -- THIS IS
22 LAYTON, AND THEY WERE DISTINGUISHING A STRUCTURE WHERE THERE
23 WERE CABLES BETWEEN ONE END OF THE POWER SUPPLY -- THIS IS A
24 POWER SUPPLY THAT'S INTERRUPTED BY THESE CABLES. THAT'S WHAT
25 THEY WERE DISTINGUISHING.

1 **THE COURT:** WHAT'S YOUR RESPONSE TO THE EARLIER
2 ARGUMENT BY THE PLAINTIFFS THAT, JUST AS A MATTER OF DEFINITION,
3 "DIRECTLY MATED" IS CONSISTENT WITH THE NOTION THAT THERE'S
4 NOTHING -- THERE'S NO STRUCTURE IN BETWEEN.

5 **MR. MOUNT:** I THINK THERE'S -- THAT IS FREQUENT MEANS
6 OF DESCRIBING "DIRECTLY MATED." I ACKNOWLEDGE THAT.

7 **THE COURT:** OKAY. SO WHY SHOULD I INCLUDE
8 INTERVENING STRUCTURE.

9 **MR. MOUNT:** IF IT IS HELPFUL TO BETTER UNDERSTAND THE
10 CLAIMS, IT CAN STICK WITH THE EARLIER DEFINITION OR WITH THIS
11 FURTHER ENHANCEMENT.

12 **THE COURT:** WELL, I MEAN, BOTH OF YOU PROPOSE TO ADD
13 SOMETHING THAT PROVIDES FURTHER DETAIL THAT SAYS, YOU KNOW, BY
14 THE WAY, IT'S DIRECT, AND BY THAT WE MEAN YOU ARE NOT GOING TO
15 HAVE THIS IN BETWEEN, EFFECTIVELY IS WHAT IT'S SAYING.

16 **MR. MOUNT:** SURE. AND AGAIN --

17 **THE COURT:** WHY IS IT THAT SINGLING OUT STRUCTURE IS
18 TELLING THEM ANYTHING?

19 **MR. MOUNT:** I DON'T KNOW THAT IT IS, YOUR HONOR. I
20 THINK WE WOULD BOTH BE EQUALLY WELL OFF WITH THE PHRASE, "TO
21 JOIN OR FIT TOGETHER," AS A DEFINITION. WE ARE IN AGREEMENT ON
22 THE FIRST -- "TO JOIN OR FIT TOGETHER" IS WHAT "DIRECTLY MATED
23 WITH" MEANS. EACH SIDE GOT INVOLVED IN ADDING -- THEY SAID
24 "WITHOUT INTERVENING STRUCTURE." WE SAY WITHOUT "INTERVENING
25 CABLES." BUT "TO JOIN OR FIT TOGETHER" WOULD BE THE NORMAL

1 MEANING OF "MATE."

2 **MR. NICODEMA:** YOUR HONOR, WE WOULD BE WILLING TO
3 LIMIT THE --

4 WE WOULD BE WILLING TO LIMIT THE CONSTRUCTION TO
5 THESE WORDS: "TO JOIN OR FIT TOGETHER," JUST THE WAY THE
6 DICTIONARY SAYS.

7 **MR. MOUNT:** TO JOIN OR FIT TOGETHER, PERIOD.

8 **THE COURT:** OKAY.

9 **MR. MOUNT:** THANK YOU.

10 **MR. NICODEMA:** ALL RIGHT, YOUR HONOR. WE'RE UP TO
11 NUMBER FOUR: "A PLURALITY OF COMPONENT CABLES."

12 THE PARTIES' CONSTRUCTION ARE IN AGREEMENT EXCEPT FOR
13 ONE WORD, THE WORD "DIFFERENT." WE HAVE THE WORD "DIFFERENT,"
14 THAT:

15 "TWO OR MORE CABLES, EACH OF WHICH IS
16 ATTACHABLE TO A DIFFERENT COMPONENT SELECTED
17 FROM THE GROUP, INCLUDING..."

18 AND THEN THE (A) THROUGH (K) ARE ALL OF THE
19 COMPONENTS RECITED IN THE PREAMBLE.

20 AND HERE IS OUR SUPPORT FOR THE WORD "DIFFERENT":

21 THE SPECIFICATION -- THE PATENTEE ACTUALLY DEFINED
22 THE WORD "COMPONENT" IN THE SPECIFICATION. AND THIS IS WHAT IS
23 HE SAID: "THUS, AS USED HEREIN, THE TERM 'COMPONENT',"
24 SINGULAR.

25 "...IS INTENDED TO INCLUDE BUT NOT BE

1 LIMITED TO ONE OR MORE MOTHERBOARDS, FLOPPY DISK
2 DRIVES," ET CETERA.

3 AND THE PATENTEE GOES ON TO REPEAT THE THINGS THAT
4 ARE IN THE PREAMBLE.

5 SO BY SAYING THE TERM "COMPONENT" IN THE SINGULAR
6 INCLUDES ONE OR MORE OF THE PREAMBLE COMPONENTS, WE READ THAT TO
7 MEAN THAT MORE THAN ONE ITEM, FOR EXAMPLE, TWO HARD DISK DRIVES,
8 IS STILL A COMPONENT, A TYPE OF COMPONENT. SO, FOR EXAMPLE, IF
9 THERE ARE TWO HARD DISK DRIVES, THEN THESE TWO ITEMS ARE STILL A
10 SINGLE TYPE OF COMPONENT, A SINGLE COMPONENT.

11 SO BASED ON THE DEFINITION OF "COMPONENT" IN THE
12 SPECIFICATION, THE CLAIM TERM "A PLURALITY OF COMPONENT CABLES"
13 SHOULD BE CONSTRUED TO MEAN TWO OR MORE CABLES, EACH OF WHICH IS
14 ATTACHABLE TO A DIFFERENT COMPONENT.

15 I DON'T BELIEVE THE DEFENDANT'S CONSTRUCTION MAKES
16 SENSE IN LIGHT OF WHAT THE PATENT DISCLOSES, YOUR HONOR, BECAUSE
17 UNDER THEIR CONSTRUCTION, YOU COULD HAVE A POWER SUPPLY WITH ALL
18 THE CABLES CONNECTED TO ONE THING AND NOTHING ELSE. I DON'T
19 THINK THAT'S WHAT THIS INVENTION IS ABOUT AT ALL, BECAUSE THE
20 WHOLE PURPOSE OF THIS INVENTION, THE PROBLEMS THAT THE INVENTORS
21 WERE TRYING TO SOLVE, IS TO GET RID OF THE CABLE CLUTTER, FIX
22 THE AIRFLOW PROBLEM, ONLY USE THE THINGS YOU NEED, ONLY USE THE
23 CABLES YOU NEED, AND CONNECT TO WHAT YOU WANT TO. IF EVERYTHING
24 HAD TO BE CONNECTED TO ONE THING, THAT WOULD DEFEAT THE WHOLE
25 PURPOSE.

1 I THINK THE PREAMBLE, THE WAY IT READS, YOUR HONOR,
2 IS CONSISTENT WITH ULTRA'S CONSTRUCTION ALSO. THIS IS THE NEXT
3 SLIDE, 68. LET'S SEE WHAT THE PREAMBLE SAYS. IT SAYS:

4 "PROVIDING DC CURRENT FROM THE POWER SUPPLY
5 TO AT LEAST THREE COMPONENTS, WHEREIN EACH
6 COMPONENT IS SELECTED FROM THE GROUP,
7 INCLUDING ..."

8 AND THEN IT RECITES A THROUGH K, AND A THROUGH K ARE
9 THE SAME A THROUGH K THAT ARE IN BOTH PARTIES' PROPOSED
10 CONSTRUCTIONS. AND EVERYBODY AGREES THE PREAMBLE IS A
11 LIMITATION OF CLAIMS ONE, FOUR AND SEVEN. SO BY ITS TERMS, THE
12 PREAMBLE MEANS POWER MUST BE SUPPLIED TO AT LEAST THREE
13 DIFFERENT COMPONENTS WITHIN THE PREAMBLE GROUP, AND THE BODIES
14 OF THE CLAIMS TELL YOU HOW TO DO THAT.

15 FOR EXAMPLE -- LET'S TAKE CLAIM 4 AS AN EXAMPLE.
16 "INCLUDES A DC OUTPUT CABLE," AND THAT COULD BE USED TO POWER
17 THE MOTHERBOARD. AND "A PLURALITY OF COMPONENT CABLES," AND
18 THOSE COULD BE USED TO POWER AT LEAST TWO ADDITIONAL PREAMBLE
19 COMPONENTS.

20 SO THE WAY THE CLAIMS ARE CONSTRUCTED, THEY ARE
21 CONSISTENT WITH WHAT THE PREAMBLE SAYS YOU HAVE TO DO, WHICH IS
22 TO PROVIDE DC CURRENT FROM THE POWER SUPPLY TO AT LEAST THREE OF
23 THE LISTED COMPONENTS.

24 OUR CONSTRUCTION IS ALSO CONSISTENT WITH FIGURE 7 OF
25 THE PATENT, WHICH SHOWS TWO DIFFERENT COMPONENTS BEING POWERED.

1 THE YELLOW WIRE IS THE MOTHERBOARD CABLE, AND THE RED IS TO
2 ANOTHER COMPONENT CABLE, AND IT TALKS ABOUT THESE BEING
3 INDIVIDUAL WIRES THAT POWER DIFFERENT THINGS. AND THE
4 DEFENDANTS DON'T DISPUTE WHAT FIGURE 7 SAYS OR THE -- WHAT IT
5 ILLUSTRATES, OR THE PORTION OF THE PATENT SPECIFICATION WHICH
6 WE QUOTE ABOVE WHICH DESCRIBES FIGURE 7.

7 NOW, IN THE DEFENDANT'S BRIEF THEY MADE TWO
8 ARGUMENTS, TWO ARGUMENTS TO SAY THAT -- TO SUPPORT THEIR
9 POSITION THAT OUR CONSTRUCTION IS NOT THE CORRECT ONE.

10 SO THE FIRST THING THEY SAY IS THAT IF YOU ADOPT
11 ULTRA'S CONSTRUCTION OF "PLURALITY OF COMPONENT CABLES," IT
12 WOULD EXCLUDE MULTIPLE SOCKETS BEING ATTACHED TO THE
13 MOTHERBOARD.

14 WELL, THAT'S NOT TRUE, BECAUSE HERE IS SOME CLAIM
15 LANGUAGE THAT'S IN ALL THE CLAIMS. AND WHAT I HIGHLIGHTED IN
16 BOLD ITALICS IS THE KEY LANGUAGE HERE. IT SAYS THAT -- THAT THE
17 COMPONENT CABLES HAVE AT LEAST TWO ENDS, AND THE SECOND END OF
18 EACH OF THE COMPONENT CABLES IS DIRECTLY MATED WITH AT LEAST ONE
19 OF THE COMPONENTS, BUT THERE ARE NO LIMITATIONS ON HOW.

20 IT DOESN'T -- IT DOESN'T RESTRICT THE NUMBER OF
21 CONNECTORS THAT CAN BE AT THE END OF THOSE CABLES AT THAT SECOND
22 END. THERE COULD BE CONNECTORS GOING TO THE MOTHERBOARD, TWO OF
23 THEM, AND THEN A CONNECTOR OR MULTIPLE CONNECTORS GOING TO OTHER
24 COMPONENTS. THE CLAIM IS NOT LIMITING.

25 SO THE CLAIM LANGUAGE DOES NOT EXCLUDE CABLE

1 CONFIGURATIONS IN WHICH EACH OF THE COMPONENT CABLES HAS
2 MULTIPLE ENDS OR MULTIPLE CONNECTORS FOR ATTACHMENT TO VARIOUS
3 COMPONENTS RECITED IN THE PREAMBLE, INCLUDING THE MOTHERBOARD.

4 ALL WE HAVE TO DO IS LOOK AT THE PLAIN LANGUAGE OF
5 THE CLAIM, YOUR HONOR. IT'S NOT LIMITING IN THAT REGARD.

6 **THE COURT:** WELL, BUT YOUR PROPOSED CONSTRUCTION,
7 WHEN IT SAYS, TWO OR MORE COMPONENT CABLES, EACH -- EACH OF
8 WHICH IS ATTACHABLE TO A DIFFERENT COMPONENT SELECTED FROM --

9 **MR. NICODEMA:** THAT'S RIGHT.

10 **THE COURT:** ISN'T THAT -- ISN'T THE MEANING OF THAT
11 PROPOSED CONSTRUCTION, DOESN'T THAT -- THAT MEANING ONE TAKES
12 FROM THAT CONSTRUCTION IS THAT IT CAN'T BE -- IF YOU HAVE THREE
13 OR FOUR OR FIVE CABLES, YOU CANNOT CONNECT TO THE SAME ITEM IN
14 THE GROUP.

15 **MR. NICODEMA:** NO, BECAUSE OF --

16 **THE COURT:** WELL, THEN THE POSITIONING OF THE WORDS
17 IS POSSIBLY PROBLEMATIC. YOU'RE SAYING IT DOESN'T MEAN THAT,
18 BUT EACH OF WHICH IS ATTACHABLE TO A DIFFERENT COMPONENT. SO
19 EACH CABLE HAS TO BE IN A DIFFERENT --

20 **MR. NICODEMA:** WELL, IT SAYS "ATTACHABLE."
21 "ATTACHABLE."

22 **THE COURT:** YES.

23 **MR. NICODEMA:** AND I THINK THAT'S A KEY WORD.
24 "ATTACHABLE TO EACH CABLE" IS ATTACHABLE TO A DIFFERENT
25 COMPONENT, BUT THAT DOESN'T EXCLUDE IT FROM HAVING OTHER

1 CONNECTORS THAT CAN BE ATTACHED TO THE SAME COMPONENT AS WELL.

2 THEY HAVE TO BE AT LEAST ATTACHABLE TO DIFFERENT
3 COMPONENTS, BUT THE ENDS OF THOSE CABLES CAN HAVE MANY, MANY
4 CONNECTORS, AND THAT'S WHY I WAS POINTING OUT THAT CLAIM
5 LANGUAGE, YOUR HONOR.

6 **THE COURT:** SO, YOU'RE FOCUSING ON THIS CAPABILITY
7 CONCEPT: IT'S GOT TO BE IT HAS TO BE CAPABLE OF ATTACHMENT
8 TO --

9 **MR. NICODEMA:** THAT'S CORRECT. THAT'S WHY WE USE --

10 **THE COURT:** IT DOESN'T MEAN IT ACTUALLY GETS ATTACHED
11 TO DIFFERENT -- OF THE GROUP, NECESSARILY.

12 **MR. NICODEMA:** THAT'S CORRECT. THAT'S WHY WE USE THE
13 WORD "ATTACHABLE" AND NOT "ATTACHED."

14 BECAUSE, REMEMBER, THESE CABLES ARE MODULAR. IT'S
15 APPROPRIATE TO USE THE WORD "ATTACHABLE," BECAUSE YOU ONLY USE
16 THE ONES YOU NEED. THEY DON'T HAVE TO BE ATTACHED TO ANYTHING,
17 AND I THINK -- AND I THINK THE KEY TO FOCUS ON IS -- AND I'LL GO
18 BACK --

19 **THE COURT:** RATHER THAN "ATTACHABLE," ISN'T WHAT
20 YOU'RE TRYING TO SAY: EACH OF WHICH -- IF I UNDERSTAND YOUR
21 MEANING -- EACH OF WHICH IS SUBJECT TO ATTACHMENT TO A
22 DIFFERENT... IN OTHER WORDS, IT COULD BE ATTACHED TO DIFFERENT
23 OF THE ITEMS, IS THAT WHAT YOU ARE TRYING TO -- IS THAT WHAT
24 YOU'RE SAYING? OR AM I GETTING IT WRONG?

25 **MR. NICODEMA:** SUBJECT TO ATTACHMENT --

1 **THE COURT:** I'M NOT SUGGESTING THAT AS A
2 CONSTRUCTION, BECAUSE I THINK THAT MAY MAKE IT MORE CONFUSING.

3 **MR. NICODEMA:** THAT'S WHAT I MEAN.

4 **THE COURT:** I'M TRYING TO UNDERSTAND IT, BECAUSE I DO
5 THINK THAT IT IS SUBJECT TO THE INTERPRETATION THAT, EVEN THOUGH
6 YOU'RE SAYING THAT'S NOT WHAT IT MEANS, I THINK IT IS SUBJECT TO
7 THE INTERPRETATION THAT AT THE END OF THE DAY, THERE MUST BE
8 ATTACHMENT TO DIFFERENT ITEMS. IT'S NOT JUST: WELL, YOU COULD
9 ATTACH IT.

10 IT HAS TO BE ABLE TO BE ATTACHED TO DIFFERENT ITEMS,
11 BUT IT, IN FACT, IN REALITY, MUST BE ATTACHED TO DIFFERENT --
12 SUCH THAT YOU COULDN'T THEN HAVE TWO CABLES GOING TO THE
13 MOTHERBOARD, WHICH IS THEIR PROBLEM.

14 **MR. NICODEMA:** THAT'S WHY I FOCUSED, YOUR HONOR, ON
15 THIS CLAIM LANGUAGE, AND SPECIFICALLY THE WORDS THAT SAY:

16 "A SECOND END OF EACH OF THE COMPONENT
17 CABLES IS DIRECTLY MATED WITH AT LEAST ONE OF
18 THE COMPONENTS."

19 ALL THAT SAYS -- THAT DOESN'T SAY HOW MANY CONNECTORS
20 THERE ARE AT THE END.

21 **THE COURT:** OKAY. IN THE CONTEXT OF THE FULL CLAIM
22 LANGUAGE, YOU'RE SAYING IT'S --

23 **MR. NICODEMA:** YES, SIR. YOU ALWAYS HAVE TO READ
24 CLAIM TERMS IN THE FULL CONTEXT OF THE REST OF THE CLAIM
25 LANGUAGE.

1 **THE COURT:** YOU DO.

2 **MR. NICODEMA:** THE DEFENDANTS MAKE A SECOND ARGUMENT
3 THAT ULTRA'S CONSTRUCTION OF THE TERM "A PLURALITY OF COMPONENT
4 CABLES" EXCLUDES A DC OUTPUT CABLE HAVING MULTIPLE CONNECTIONS
5 AT THE MOTHERBOARD.

6 ALL RIGHT. HERE'S THE CLAIM LANGUAGE FROM THE
7 CLAIMS ABOUT THE DC OUTPUT CABLE. IT SAYS:

8 "AT LEAST ONE DC OUTPUT CABLE, WHEREIN A
9 FIRST END OF THE DC OUTPUT CABLE IS FIXED TO THE
10 POWER SUPPLY HOUSING; WHEREIN A SECOND END OF
11 THE DC OUTPUT CABLE TERMINATES WITH AT LEAST ONE
12 DC OUTPUT CABLE PLUG OR SOCKET."

13 THAT DOESN'T EXCLUDE MULTIPLE CONNECTIONS TO THE
14 MOTHERBOARD. ON ITS FACE IT DOESN'T EXCLUDE IT.

15 SO OUR SUMMARY OF THAT, WHICH COMES RIGHT OUT OF OUR
16 BRIEF IS:

17 "THE BREADTH OF THIS LIMITATION CLEARLY
18 ENCOMPASSES ONE OR MORE DC OUTPUT CABLES."

19 IT SAYS, "AT LEAST ONE."

20 "EACH DC OUTPUT CABLE HAVING ONE OR MORE DC
21 OUTPUT PLUGS OR SOCKETS."

22 IT SAYS "AT LEAST ONE" IN THE CLAIM.

23 BY NOT HAVING LIMITING LANGUAGE IN THERE, THE
24 CONCLUSION IS THESE "ONE OR MORE DC OUTPUT CABLE PLUGS OR
25 SOCKETS" ARE AVAILABLE FOR DIRECT ATTACHMENT TO THE MOTHERBOARD,

1 AND "ONE OR MORE DC OUTPUT CABLE -- " AND IT CAN ALSO HAVE ONE
2 OR MORE DC OUTPUT CABLE PLUGS OR SOCKETS AVAILABLE FOR DIRECT
3 ATTACHMENT TO DIFFERENT PREAMBLE COMPONENTS.

4 IT'S THE ABSENCE OF WORDS OF LIMITATION ON WHAT CAN
5 BE AT THE ENDS OF THESE CABLES THAT SUPPORTS OUR CONSTRUCTION.

6 **THE COURT:** MR. MOUNT?

7 **MR. MOUNT:** YOUR HONOR, THERE ARE OTHER PORTIONS OF
8 THE CLAIM. THEY REFER TO CLAIM 4 TO TRY TO SUPPORT THEIR
9 ASSERTION THAT YOU SHOULD ADD THIS DIFFERENT TERM IN. AND IT IS
10 TRUE THAT THE PLAIN READING OF THIS PARAGRAPH, THE WAY THEY POSE
11 IT IS -- WOULD EXCLUDE THE STRUCTURE THAT THEY ARE SELLING AND
12 THE STRUCTURE THAT THEY'RE CLAIMING, BECAUSE THEY ARE SHOWING --
13 THEY ARE SHOWING TWO CABLES GOING -- THIS IS THE MOTHERBOARD.
14 THIS IS ONE PLACE WHERE THE POWER IS GOING. THERE'S ANOTHER
15 PLACE WHERE THE POWER IS GOING. THERE'S THE 24-PIN AND THE
16 12-VOLT PIN. AND THEY ARE ADDING -- THEIR CLAIMS, IF YOU ADD
17 THIS PHRASE, THAT THE CABLES HAVE TO BE ATTACHABLE TO DIFFERENT,
18 WOULD NOT INCLUDE THE STRUCTURE THAT THEY'RE SELLING AND THE
19 STRUCTURE THEY CLAIM. (INDICATING.)

20 **THE COURT:** MR. NICODEMA IS SUGGESTING IT WOULD
21 BECAUSE THERE'S NOTHING INCONSISTENT WITH TWO CABLES BEING
22 ATTACHED TO THE MOTHERBOARD IN HIS INTERPRETATION --

23 **MR. MOUNT:** WELL --

24 **THE COURT:** -- HIS PROPOSED CONSTRUCTION, BECAUSE
25 HE'S SAYING, WELL, ALL THAT'S SAYING IS THOSE SAME CABLES HAVE

1 TO BE CAPABLE OF BEING ATTACHED TO MORE THAN ONE, IF I
2 UNDERSTOOD HIS ARGUMENT.

3 **MR. MOUNT:** CAPABLE OF --

4 **THE COURT:** WELL, THAT'S THE ARGUMENT.

5 **MR. PASQUINELLI:** THAT'S NOT WHAT THEIR PRODUCT IS.

6 **MR. MOUNT:** THAT'S TRUE. THAT'S NOT WHAT THEIR
7 PRODUCT IS. IT WOULDN'T COVER THEIR PRODUCT, AS I UNDERSTAND
8 WHAT THEY'RE SELLING.

9 **MR. NICODEMA:** YOUR HONOR, IT WOULD COVER THE
10 PRODUCT. AND YOU SAID SOMETHING VERY IMPORTANT THIS MORNING.
11 YOU RECOGNIZE THAT UNDER THE LAW, YOU CANNOT LOOK AT THE ACCUSED
12 DEVICE IN CONSTRUING CLAIMS. YOU ALSO CAN'T LOOK AT THE
13 PATENTED DEVICE. BUT WE DO COVER IT. THE PLAIN LANGUAGE OF THE
14 CLAIM SUPPORTS US.

15 **MR. PASQUINELLI:** THAT'S NOT TRUE.

16 **THE COURT:** WELL, LET'S NOT HAVE EXPRESSIONS FROM
17 PARTICIPANTS.

18 GO AHEAD, MR. MOUNT, IF YOU HAVE SOMETHING YOU WANT
19 TO --

20 **MR. MOUNT:** I THINK -- I THINK THAT THE INCLUSION OF
21 THE WORD "DIFFERENT," AGAIN, THEY'RE ADDING WORDS THAT DON'T
22 BELONG.

23 WHAT WE HAVE DONE IN TERMS OF OUR CONSTRUCTION IS WE
24 HAVE BROUGHT IN WHAT THE CLAIM LANGUAGE IS AND ARE RELYING ON
25 IT. YOU GO BACK TO THE CLAIM LANGUAGE ITSELF. WHAT YOU'RE

1 TALKING ABOUT -- THERE'S NOTHING IN THE PREAMBLE THAT'S BEING
2 BROUGHT IN AS LIMITATION WHERE IT SUPPORTS THEIR ASSERTION THAT
3 THERE HAVE TO BE DIFFERENT COMPONENTS THAT -- WHAT THE -- IT
4 SAYS IT MUST BE ONE OF THE FOLLOWING LISTED ITEMS. IT DOESN'T
5 SAY THAT THEY HAVE TO BE DIFFERENT ONES. IT JUST SAYS THEY MUST
6 BE ATTACHED TO ONE OR MORE OF THESE DEVICES, AND THEY SIMPLY
7 ADDED THIS NEW LIMITATION TO TRY TO NARROW THE SCOPE OF PRIOR
8 ART. BUT THERE'S NO SUPPORT FOR THAT SUGGESTION THAT THIS
9 ADDITIONAL TERM GETS INTO THE CLAIM LANGUAGE.

10 THE PREAMBLE IS BEING BROUGHT IN, DOES NOT SUGGEST
11 THE WORD DIFFERENT WAS EVER USED OR INTENDED TO BE USED, AND THE
12 BEST -- UNLESS THERE'S SOME COMPELLING REASON TO BRING LANGUAGE
13 INTO THE CLAIMS, IT'S NOT JUSTIFIED.

14 **MR. NICODEMA:** YOUR HONOR, I'M READY TO MOVE ON TO
15 THE SOCKET ELEMENTS.

16 **THE COURT:** DC -- SO SOCKET, FIRST OF ALL, OR --

17 **MR. NICODEMA:** I PUT THESE IN SEPARATE CHARTS, BUT WE
18 ARE GOING TO TAKE THEM AS A GROUP: SOCKETS, DC OUTPUT SOCKETS,
19 AND DC OUTPUT CABLE SOCKETS. HERE IS THE FIGHT HERE: WE'RE
20 BASICALLY THE SAME UNTIL WE GET TO THE END. I THINK I PROBABLY
21 HAVE A MISTAKE HERE IN THEIR CONSTRUCTION.

22 I THINK THEIR CONSTRUCTION REQUIRES THAT THE SOCKET
23 BE FIXED TO THE POWER SUPPLY HOUSING. THAT'S WHY I PUT IN THAT
24 NEGATIVE LIMITATION, "NOT NECESSARILY A POWER SUPPLY HOUSING."
25 MAYBE WE SHOULD STOP HERE.

1 DID I MAKE A MISTAKE, GENTS?

2 **MR. PASQUINELLI:** NO, THAT'S OUR CONSTRUCTION.

3 **MR. MOUNT:** YOU ADDED THAT PARENTHETICAL PHRASE. I
4 WAS WONDERING, TOO WHAT -- INTERESTINGLY, THERE'S MUCH AGREEMENT
5 THROUGH THE WORD "STRUCTURE."

6 **MR. NICODEMA:** YOUR HONOR --

7 **THE COURT:** EVEN BEYOND "STRUCTURE," YOU HAVE "SUCH
8 AS A HOUSING."

9 **MR. NICODEMA:** YOUR HONOR, AS LONG AS -- AS LONG AS
10 THE CONSTRUCTION SAYS "SUCH AS A HOUSING," AND NOT "SUCH AS THE
11 POWER SUPPLY HOUSING -- " THEY PROBABLY ARGUE THAT IN THEIR
12 BRIEF BECAUSE I DON'T THINK I'M DELUSIONAL HERE. I'M HAPPY TO
13 TAKE OUT -- OOPS. I'M HAPPY TO TAKE OUT THIS PART.

14 **THE COURT:** "NOT NECESSARILY... " THE PARENTHETICAL
15 YOU ARE WILLING TO TAKE OUT?

16 **MR. NICODEMA:** YES, AS LONG AS IT SAYS, "SUCH AS A
17 HOUSING," AND HERE'S WHY -- HERE'S WHY: THE SPECIFICATION OF
18 THE PATENT DEFINES --

19 **MR. MOUNT:** WE AGREE WITH THAT, YOUR HONOR.

20 **MR. NICODEMA:** OKAY. I CAN STOP RIGHT THERE?

21 **MR. MOUNT:** I THINK WHAT HE'S SAYING IS HE'S READY TO
22 DROP THE PARENTHETICAL PHRASE --

23 **THE COURT:** JUST ONE AT A TIME SO OUR POOR COURT
24 REPORTER CAN --

25 **MR. NICODEMA:** I JUST WANTED YOUR HONOR TO SEE WHERE

1 I WAS COMING FROM. WE TALK ABOUT THIS IN OUR BRIEFS.

2 HOLD ON, YOUR HONOR.

3 **MR. NICODEMA:** RIGHT. I GUESS THE ONLY DIFFERENCE
4 BETWEEN OUR CONSTRUCTIONS THEN IS WE'RE SPECIFIC TO THE
5 PARTICULAR DEVICE.

6 **THE COURT:** YES, I NOTICED THAT.

7 **MR. NICODEMA:** AND I THINK WE NEED TO HAVE THAT IN
8 THERE, BECAUSE LOOK, THE CLAIM ELEMENT SAYS "DC OUTPUT CABLE
9 SOCKET." IT HAS TO BE A DC DEVICE AND NOT JUST A DEVICE. OKAY?
10 BUT JUST SO YOUR HONOR DOESN'T THINK I'VE LOST IT, IN
11 THE PATENT THEY SPECIFICALLY -- WE SPECIFICALLY DEFINE "SOCKET"
12 AS SOMETHING THAT'S FIXED TO A RELATIVELY FIXED STRUCTURE SUCH
13 AS A HOUSING. WE DIDN'T SAY -- WE DIDN'T LIMIT IT TO POWER
14 SUPPLY HOUSING. THAT'S REALLY IT. AND I CAN SKIP ALL OF THIS.

15 **THE COURT:** WELL, LET ME GO BACK HERE AND ASK
16 MR. MOUNT: THE DIFFERENCE, PUTTING ASIDE FOR A MOMENT THE
17 PARENTHETICAL IS AT THE BEGINNING OF THE PROPOSED CONSTRUCTION
18 AS MR. NICODEMA POINTS OUT, THE DEVICE IS FURTHER IDENTIFIED AS
19 THE DC OUTPUT DEVICE, AND THE PROPOSED CONSTRUCTION FROM THE
20 DEFENSE IS "A DEVICE." IS THAT OF ANY CONSEQUENCE?

21 **MR. MOUNT:** I'M SORRY?

22 **MR. NICODEMA:** YOUR HONOR, IF YOU LOOK AT SOCKETS, DC
23 OUTPUT SOCKETS AND DC OUTPUT CABLE SOCKETS, EACH OF OUR
24 CONSTRUCTIONS OF THOSE --

25 **THE COURT:** LET ME STOP YOU GUYS.

1 **MR. NICODEMA:** OKAY.

2 **THE COURT:** I UNDERSTAND AS YOU ARE GETTING INTO
3 IT -- AND I'M FOLLOWING YOU, BUT THE RECORD WHEN IT GOES TO THE
4 FEDERAL CIRCUIT, AS IT PERHAPS WILL, THEY WON'T BE ABLE TO
5 FOLLOW IT.

6 **MR. NICODEMA:** UNDERSTOOD.

7 **THE COURT:** SO LET'S DO IT ONE AT A TIME.

8 GO AHEAD, MR. NICODEMA.

9 **MR. NICODEMA:** IT'S JUST THAT FOR THE TERM, "SOCKET,"
10 "DC OUTPUT SOCKET" AND "DC OUTPUT CABLE SOCKET," THEY ARE ALL DC
11 OUTPUT DEVICES. THAT'S WHY WE PUT THOSE WORDS IN EACH OF OUR
12 CONSTRUCTIONS. THAT'S ALL. THEY ARE NOT JUST DEVICES.

13 SEE, IN ONE OF THEM, THEY ACTUALLY PUT A DC OUTPUT
14 DEVICE, THE DEFENDANTS. BUT THEN FOR SOCKETS THEY PUT IT IN
15 THERE, BUT FOR DC OUTPUT SOCKETS, THEY JUST PUT "A DEVICE," AND
16 SINCE THE CLAIM LANGUAGE IS EVEN MORE SPECIFIC, I WOULD THINK
17 THEIR CONSTRUCTION SHOULD BE MORE SPECIFIC, AND THEN WHEN WE
18 HAVE DC OUTPUT CABLE SOCKET, THEY JUST SAY "A DEVICE." WE WANT
19 IT TO BE "A DC OUTPUT DEVICE."

20 **THE COURT:** ALL RIGHT. MR. MOUNT, HOW ABOUT A DC
21 OUTPUT DEVICE?

22 **MR. MOUNT:** MAY I?

23 **THE COURT:** YOU MAY.

24 **MR. MOUNT:** JUST ONE MOMENT, IF I COULD. I JUST WANT
25 TO MAKE SURE THAT --

1 **THE COURT:** CERTAINLY. IS DC OUTPUT SOCKET, DC
2 OUTPUT SOCKET DC OUTPUT CABLE SOCK.

3 **MR. MOUNT:** YOUR HONOR, I DON'T SEE WHY THERE'S
4 DISAGREEMENT ABOUT THAT FIRST PHRASE. I THINK THE BRIEFING HAD
5 ALL BEEN TIED IN WITH THE HOUSING PHRASE.

6 **THE COURT:** THE PARENTHETICAL?

7 **MR. MOUNT:** PARENTHETICAL. AND IF --

8 **THE COURT:** ALL RIGHT.

9 **MR. MOUNT:** BUT I MAY RESERVE -- IF THERE'S ANY
10 DISAGREEMENT ABOUT THAT, I WOULD RAISE IT BEFORE I FINISH MY
11 FINAL ARGUMENT TODAY.

12 **THE COURT:** ALL RIGHT. WE WILL MOVE ON AT THIS
13 JUNCTURE, BARRING SOME FURTHER INDICATION THAT THERE'S A
14 DISPUTE.

15 WE ARE GOING TO ADOPT THE CONSTRUCTION OF DC OUTPUT
16 DEVICE IN TERMS OF THE SOCKET, AND, ACTUALLY, WITH RESPECT TO
17 THE OUTPUT SOCKET, OUTPUT CABLE SOCKET, IT'S GOING TO SAY "A DC
18 OUTPUT DEVICE," AND WE WILL PUT WHAT BOTH SIDES AGREE AND
19 EXCLUDE THE PARENTHETICAL.

20 **MR. NICODEMA:** YES, YOUR HONOR.

21 **MR. MOUNT:** THANK YOU.

22 **THE COURT:** ALL RIGHT. WHAT'S OUR NEXT ONE?

23 **MR. NICODEMA:** I CAN SKIP THESE.

24 THEIR INDEFINITE- -- LET ME GO TO THEIR
25 INDEFINITENESS ARGUMENT. THAT'S WHY I PUT THAT PARENTHETICAL IN

1 THERE. I'M NOT CRAZY. THERE WAS A REASON FOR IT, BUT WE DON'T
2 NEED IT.

3 ULTRA'S CONSTRUCTION OF THE SOCKET ELEMENTS, THE
4 DEFENDANTS SAY THAT REQUIRES -- THAT REQUIRES THE SOCKETS TO BE
5 SIMULTANEOUSLY FIXED AND NOT FIXED TO POWER SUPPLY HOUSING. I
6 WAS SCRATCHING MY HEAD A LITTLE BIT TO TRY TO FIGURE OUT WHAT
7 THEY WERE TALKING ABOUT.

8 I GUESS THEY MEANT BECAUSE OF THE PARENTHETICAL, BUT
9 THE PATENT IS VERY CLEAR THAT THE DC OUTPUT CABLE SOCKETS ARE
10 ATTACHED TO A RELATIVELY FIXED STRUCTURE SUCH AS A HOUSING. IT
11 DOESN'T HAVE TO BE THE POWER SUPPLY HOUSING.

12 THE PATENTEES WERE VERY CLEAR IN THE CLAIM LANGUAGE
13 WHEN THEY WANTED SOMETHING TO BE FIXED TO THE POWER SUPPLY
14 HOUSING. THEY SAID POWER SUPPLY HOUSING AND THE WORD "HOUSING"
15 IS USED THROUGHOUT THE SPECIFICATION IN DIFFERENT CONTEXTS.

16 SO AS I UNDERSTOOD THEIR INDEFINITENESS ARGUMENT,
17 THERE'S SOMETHING WRONG WITH THE PATENT BASED ON OUR
18 CONSTRUCTION, BECAUSE IT WOULD REQUIRE THE SOCKETS TO BE
19 SIMULTANEOUSLY FIXED AND NOT FIXED TO THE POWER SUPPLY HOUSING.

20 NOW WE HAVE A COMMON CONSTRUCTION WHICH JUST SAYS
21 "HOUSING," AND IT'S FINE. IT DOESN'T EXCLUDE THE SOCKETS BEING
22 FIXED TO THE POWER SUPPLY HOUSING, AND IT DOESN'T REQUIRE THEM.
23 THE CLAIMS ALREADY RECITE -- CLAIMS 1 AND 4, YOUR HONOR, ALREADY
24 RECITE THAT THE SOCKETS AT ONE END ARE FIXED TO THE POWER SUPPLY
25 HOUSING. SO WHEN THE INVENTORS WANTED TO SAY THAT, THEY SAID

1 IT.

2 **THE COURT:** THEY SPECIFIED.

3 **MR. NICODEMA:** YES.

4 AND ONE THING ABOUT INDEFINITENESS, YOUR HONOR -- AND
5 I KNOW WE BRIEFED THIS -- THE COURT CAN ONLY FIND THE CLAIM
6 INDEFINITE IF THEY'RE WHAT THE FEDERAL CIRCUIT HAS LOVINGLY SAID
7 THE CLAIMS ARE INSOLUBLY AMBIGUOUS, INCAPABLE OF CONSTRUCTION.
8 WE JUST CONSTRUED IT.

9 NOW WE ARE UP TO "PLUG," AND WE CAN TAKE THESE --

10 **THE COURT:** CAN I HEAR ON THE INDEFINITENESS
11 ARGUMENT?

12 **MR. NICODEMA:** OH, I'M SORRY.

13 **MR. MOUNT:** THANK YOU.

14 THE INDEFINITE ISSUE IS A LITTLE BIT DIFFICULT TO
15 TALK TO BECAUSE THE CLAIMS THEMSELVES ARE CONFUSING. IT TAKES A
16 WHILE TO FULLY APPRECIATE CLAIM 4 AND WHY IT IS INDEFINITE, NOT
17 INDEFINITE IN TERMS OF -- WELL, IT'S JUST NOT A SENSIBLE CLAIM.

18 NOW, WHEN WE LOOK AT CLAIM 4, WE'VE GOT A PLURALITY
19 OF COMPONENT CABLES WHEREIN EACH OF THE COMPONENT CABLES HAS TWO
20 ENDS. OKAY? WHEREIN, A FIRST END OF EACH COMPONENT CABLE HAS A
21 PLUG THAT IS DIRECTLY MATED WITH ONE OF THE, AT LEAST, TWO
22 OUTPUT SOCKETS. DOES THAT MAKES SENSE? OR -- OR THE AT LEAST
23 ONE DC OUTPUT CABLE PLUG.

24 HOW DOES THIS MAKE SENSE?

25 WHEN YOU LOOK AT PLUG, AND I MAY BE GETTING AHEAD OF

1 MYSELF, BUT PLUGS ARE DESIGNED TO COOPERATE WITH SOCKETS. SO
2 YOU CANNOT HAVE A CABLE PLUG THAT IS DIRECTLY MATED TO A CABLE
3 PLUG. YOU CANNOT DO THAT. "PLUG" IS CLEARLY DEFINED AS
4 COOPERATING WITH A SOCKET, SOCKET WITH A PLUG.

5 **THE COURT:** DOESN'T THE "OR" SAY THAT, BECAUSE THERE
6 IS THE ALTERNATIVE IS ONE THAT YOU WOULD SAY IS NOT --

7 **MR. MOUNT:** OR, POTENTIALLY, YOU GO TO A CABLE
8 SOCKET. BUT WHAT IF WE AGREE THE SOCKET IS, A CABLE SOCKET IS A
9 RELATIVELY FIXED STRUCTURE; THAT IS, IT'S FIXED. THIS CANNOT BE
10 A CABLE SOCKET. THIS CAN'T BE A CABLE SOCKET. IT'S NOT FIXED.

11 JUST TWO MINUTES AGO WE DESCRIBED IT DOESN'T HAVE TO
12 BE FIXED TO A HOUSING. IT HAS TO BE FIXED TO SOMETHING. THIS
13 IS NOT A SOCKET. SO THE TWO -- ONE END FITS HERE -- I'M SORRY.

14 YOU ARE EITHER GOING TO MATE WITH A PLUG, WHICH YOU
15 CAN'T DO, OR A CABLE SOCKET, WHICH IS DEFINED AS EXCLUDED FROM
16 THESE STRUCTURES. THAT IS THE FUNDAMENTAL PROBLEM WITH CLAIM 4.
17 IT'S SIMPLE TO UNDERSTAND ONCE YOU APPRECIATE IT.

18 NOW, THE SECOND END IS MATED WITH A COMPONENT. SO
19 GOING TO THE EXTRA LANGUAGE, THAT'S CLEAR WHAT THAT MEANS. THE
20 SECOND END OF THE CABLE IS DIRECTLY MATED WITH THE COMPONENT.
21 THAT MAKES SENSE.

22 IT IS JUST THE FIRST END HAS A PLUG, THE FIRST END OF
23 THE COMPONENT CABLE HAS A PLUG THAT'S EITHER DIRECTLY THEN MATED
24 WITH ONE OF THE TWO DC OUTPUT SOCKETS OR -- I'M SORRY -- OR AT
25 LEAST ONE DC CABLE PLUG, WHICH IT CANNOT BE, OR CABLE SOCKET,

1 WHICH IS NOT -- NOT DESCRIBED, NOT A FIXED STRUCTURE AS WE JUST
2 DEFINED IT.

3 **MR. NICODEMA:** BRIEFLY, YOUR HONOR, MAY I USE THAT
4 SLIDE?

5 **THE COURT:** YOU MAY.

6 **MR. NICODEMA:** THE ISSUE HERE FROM THEIR PERSPECTIVE
7 IS DOES THIS HAVE TO BE FIXED TO THE POWER SUPPLY HOUSING.

8 **THE COURT:** RIGHT.

9 **MR. NICODEMA:** IT DOESN'T. IT CAN BE FIXED TO THE
10 COMPUTER HOUSING, BECAUSE OUR DEFINITION OF "SOCKET" SAID
11 HOUSING, AND THAT'S POWER BAR. LET'S BRING THE VEIL UP.
12 THEY'RE TALKING ABOUT POWER BAR HERE. AND IN POWER BAR, YOU
13 HAVE THE STRIP OF SOCKETS, THE STRIP OF CONNECTORS THAT ARE ON
14 THE COMPUTER CASE.

15 THIS CABLE, THIS END HERE CAN BE CONNECTED TO THAT
16 STRIP OF CONNECTORS, WHICH IS ON THE COMPUTER CASE. SO IT MEETS
17 THE DEFINITION OF "ATTACHED TO A RELATIVELY FIXED STRUCTURE SUCH
18 AS A HOUSING." IT'S THE HOUSING OF THE COMPUTER CASE.

19 IT DOESN'T HAVE TO BE THE POWER SUPPLY HOUSING.
20 THAT'S WHERE THEY GET THIS CONFUSION IN THEIR BRIEF ABOUT, WELL,
21 THE WAY WE CONSTRUE THE CLAIM, IT HAS TO BE SIMULTANEOUSLY FIXED
22 AND NOT FIXED TO THE POWER SUPPLY HOUSING.

23 THAT WAS THE ONLY INDEFINITENESS ARGUMENT THEY MADE,
24 THAT IT HAS TO BE SIMULTANEOUSLY FIXED AND NOT FIXED TO THE
25 POWER SUPPLY HOUSING. THAT'S WHAT I RESPOND TO.

1 IT DOESN'T HAVE TO BE THE POWER SUPPLY HOUSING, YOUR
2 HONOR. IT SAYS "A HOUSING," AND THEY JUST AGREED TO IT. IT CAN
3 BE THE HOUSING OF THE COMPUTER CABLES. SO THERE IS NO
4 INDEFINITENESS HERE.

5 **MR. MOUNT:** YOUR HONOR? I INVITE THE COURT TO LOOK
6 FOR A POWER STRIP, LOOK FOR SOMETHING IN THE FILE HISTORY, LOOK
7 FOR SOMETHING IN THE PATENT THAT TALKS ABOUT HOW THIS IS FIXED
8 IN THE WAY "FIXED" IS UNDENIABLY UNDERSTOOD.

9 THERE'S NOTHING HERE THAT'S ABOUT THAT POWER BAR,
10 NOTHING ABOUT THAT OTHER DEVICE THAT'S LIKE YOUR OWN POWER
11 STRIP.

12 WHAT THEY'RE SAYING IS EITHER YOU ARE GOING TO MATE A
13 PLUG TO A PLUG, WHICH MAKES NO SENSE, OR THIS CABLE SOCKET IS
14 FIXED. THAT'S NOT WHAT THEY SHOW. THIS IS NOT A FIXED
15 STRUCTURE. AND THE POWER BAR IS PRODUCT THAT'S NOWHERE
16 DESCRIBED IN THAT. WE ARE NOT TALKING PLUG TO PLUG.

17 **MR. NICODEMA:** I THINK WE ARE ON THE LAST ELEMENT,
18 YOUR HONOR. IT'S THE COLLECTION OF THREE ELEMENTS THAT RECITE
19 "PLUG" IN SOME WAY SHAPE OR FORM.

20 **THE COURT:** RIGHT.

21 **MR. NICODEMA:** RIGHT.

22 PLUG, DC OUTPUT PLUG, DC OUTPUT CABLE PLUG. ALL
23 RIGHT?

24 AND HERE IS WHERE THE PARENTHETICAL BECOMES
25 MEANINGFUL, YOUR HONOR. OUR CONSTRUCTION SAYS IT'S ATTACHED TO

1 A RELATIVELY MOVEABLE STRUCTURE SUCH AS A CABLE, SUCH AS A
2 CABLE, BUT NOT NECESSARILY A CABLE, AND THEY SAY SUCH AS A
3 CABLE.

4 I'M WILLING TO REMOVE THAT PARENTHETICAL, BECAUSE I
5 THINK THE WORDS ON THEIR FACE, JUST LIKE THE WORDS "SUCH AS A
6 HOUSING" ARE NOT LIMITED. IT DOESN'T REQUIRE IT TO BE -- I
7 MEAN, WE DON'T EVEN NEED "CABLE" THERE. MAYBE WE SHOULD HAVE "A
8 RELATIVELY MOVEABLE STRUCTURE" BECAUSE "SUCH AS A CABLE" ISN'T
9 HELPFUL BECAUSE IT'S NOT LIMITED TO A CABLE.

10 **THE COURT:** "SUCH AS" COULD GIVE SOME, YOU KNOW, SOME
11 CONCEPT, IF THEY'RE FISHING FOR WHAT IS A MOVEABLE STRUCTURE --
12 WELL, AN IDEA OF ONE KIND OF MOVEABLE STRUCTURE IS A CABLE. I'M
13 NOT SURE -- IT ISN'T HELPFUL IN TERMS OF FOCUSING THE MIND A BIT
14 ON WHAT YOU'RE TALKING ABOUT WHEN YOU SAY "MOVEABLE STRUCTURE,"
15 BECAUSE THAT'S A BIT OF AN ODD TERM.

16 **MR. NICODEMA:** TO PREVENT THE FISHING EXPEDITION,
17 YOUR HONOR, I WOULD LIKE -- I THINK IT'S IMPORTANT TO HAVE THIS
18 NEGATIVE LIMITATION, "BUT NOT NECESSARILY A CABLE," BECAUSE
19 NOWHERE DOES THE PATENT SAY THAT IT HAS TO BE ATTACHED TO A
20 CABLE, AND HERE'S WHY --

21 **THE COURT:** WELL, SO YOUR FIRST SUGGESTION, TO GO
22 BACK TO IT, IS, IF YOU CAN GO BACK TO YOUR PROPOSED
23 CONSTRUCTION --

24 **MR. NICODEMA:** YES, SIR.

25 **THE COURT:** WOULD BE TO END AT "MOVEABLE STRUCTURE"?

1 **MR. NICODEMA:** YES, SIR.

2 **THE COURT:** LET ME JUST FIRST FIND OUT FROM THE
3 DEFENSE SIDE THEIR REACTION TO THAT.

4 **MR. MOUNT:** WELL, YOUR HONOR, WHERE WE AGREE, THIS IS
5 STRICTLY OUT OF THE SPECIFICATION "ATTACHED TO A RELATIVELY
6 MOVEABLE STRUCTURE SUCH AS ELECTRICAL CABLES," RIGHT IN THE
7 SPEC.

8 **THE COURT:** IN THE SPECIFICATION, IT SAYS "SUCH AS AN
9 ELECTRICAL CABLE"?

10 **MR. NICODEMA:** NO.

11 **MR. MOUNT:** (READING)

12 "FURTHER, SUCH A PLUG IS INTENDED TO REFER
13 TO A DEVICE ATTACHED TO A RELATIVELY MOVEABLE
14 STRUCTURE SUCH AS AN ELECTRICAL CABLE."

15 WE BOTH SAID "SUCH AS A CABLE." YOU COULD SAY
16 "ELECTRICAL CABLE," BUT I DON'T SEE WE ARE ADDING CLARITY BY
17 LIMITING WHAT THE SPECS ARE.

18 **THE COURT:** BEFORE YOU ALL ENGAGE ON THAT ISSUE, I
19 TAKE IT YOU'RE SAYING THAT YOU WANT THE -- YOU DON'T WANT TO
20 STOP AT "MOVEABLE STRUCTURE"; YOU WANT "SUCH AS A CABLE" BASED
21 ON THE FACT IT'S IN THE SPECIFICATION?

22 **MR. MOUNT:** EXACTLY.

23 **THE COURT:** OKAY.

24 NOW, ON THE PARENTHETICAL THAT SAYS "NOT NECESSARILY
25 A CABLE," WHAT'S YOUR VIEW OF THE SUGGESTION, AT ONE POINT,

1 ANYWAY, BY MR. NICODEMA WAS TO REMOVE THAT? THAT WAS IN HIS
2 PROPOSED CONSTRUCTION.

3 **MR. MOUNT:** SURE. I THINK IT MAKES SENSE. IF YOU
4 REMOVE THAT EXTRA PARENTHETICAL PHRASE, WE'RE BACK TO THE
5 SPECIFICATION AND BACK TO WHAT WE WANTED.

6 **THE COURT:** WELL, THAT'S BACK TO YOUR CONSTRUCTION.
7 OKAY. WHERE ARE WE ON THAT?

8 **MR. NICODEMA:** WHERE WE ARE, YOUR HONOR, IS, FIRST OF
9 ALL, THE DEFINITION OF "PLUG" DOES NOT SAY "SUCH AS AN
10 ELECTRICAL CABLE," BECAUSE I HAVE IT RIGHT HERE. IT SAYS "SUCH
11 AS A CABLE."

12 AND MY CONCERN NOW, YOUR HONOR, IS YOU KIND OF -- YOU
13 SAID THAT THIS MAY LEAD TO A FISHING EXPEDITION AS TO WHAT THE
14 RELATIVELY MOVEABLE STRUCTURE CAN BE, AND AS LONG AS IT'S CLEAR
15 THAT IT'S NOT REQUIRED THAT THE PLUG BE CONNECTED TO A CABLE,
16 I'M FINE. THAT'S WHY I HAD THE NEGATIVE LIMITATION TO BEGIN
17 WITH.

18 I DON'T WANT THE CLAIM -- THERE'S NOTHING IN THE
19 INTRINSIC RECORD THAT WOULD REQUIRE A PLUG TO BE ATTACHED TO A
20 CABLE, PER SE, AND THAT'S WHY, FOR ALL THE PLUG ELEMENTS, WE PUT
21 IN THIS NEGATIVE LIMITATION AND THE PARENTHETICAL AT THE END.

22 **THE COURT:** WELL, MY NOTION, THE PLAIN MEANING OF
23 "SUCH AS" IS THAT IT -- BY THE USE OF THAT TERM, IT MEANS IT'S
24 NOT REQUIRED. I DON'T THINK "SUCH AS" -- I DON'T THINK ANYONE
25 WOULD THINK "SUCH AS" MEANS IT MUST BE.

1 **MR. NICODEMA:** THEN I'M FINE WITH THAT. I'M FINE IF
2 WE GO BACK TO THE WAY WE HAD IT. I THINK WE'RE -- I'M READING
3 QUICKLY. IT LOOKS LIKE OUR CONSTRUCTIONS ARE IDENTICAL EXCEPT
4 FOR THE PARENTHETICAL.

5 **MR. MOUNT:** I THINK THAT'S CORRECT.

6 **MR. NICODEMA:** I THINK WE ARE FINE WITH THAT. AND
7 WITH YOUR HONOR'S STATEMENT THAT "SUCH AS A CABLE" DOES NOT
8 REQUIRE IT TO BE ATTACHED TO A CABLE, WE'RE FINE WITH THAT.

9 **THE COURT:** IN FACT, NOT TO PILE ON YOUR -- I THINK
10 THE CONCERN THAT YOU'RE EXPRESSING IS -- I THINK YOUR
11 PARENTHETICAL ALMOST IMPLIES -- CREATES MORE PROBLEMS THAN YOU
12 WOULD WANT TO CREATE, BECAUSE I DON'T THINK IF YOU HEAR "SUCH AS
13 A CABLE," IT WOULD EVEN OCCUR TO YOU THAT IT'S NECESSARILY A
14 CABLE. BUT THEN WITH THAT PARENTHETICAL, I THINK IT MAKES IT
15 CONFUSING. OKAY. OUT GOES THE PARENTHETICAL.

16 **MR. NICODEMA:** FOR THE THREE CABLE ELEMENTS, CABLE
17 DC -- I MEAN FOR THE THREE PLUG ELEMENTS: CABLE, A PLUG, DC
18 OUTPUT PLUG, AND DC OUTPUT CABLE PLUG.

19 **THE COURT:** OKAY.

20 **MR. NICODEMA:** WE JUST TAKE THE PARENTHETICAL OUT.

21 **THE COURT:** WE WILL. OKAY.

22 **MR. NICODEMA:** AND THAT IS IT. WE COVERED ALL SIX.

23 **THE COURT:** FABULOUS.

24 OKAY. WHAT I HAVE TO -- JUST TO GO OVER WHAT IS IN
25 DISPUTE AND WHAT I NEED TO FOCUS ON AND GO BACK AND REVIEW WHAT

1 YOU SUBMITTED TO ME, THE LIVE ISSUES IF YOU WILL, ON
2 CONSTRUCTION, MY -- IF MY NOTES ARE CORRECT, WITH RESPECT TO
3 PERSONAL COMPUTER POWER SUPPLY, THERE REMAINS THE ISSUE OF
4 EXCLUDING "REDUNDANT POWER SUPPLY" ISSUE. THAT I NEED TO
5 DECIDE.

6 **MR. NICODEMA:** YES, SIR.

7 **THE COURT:** YES. OKAY.

8 THEN WITH RESPECT TO THE INDEFINITENESS ARGUMENT FOR
9 CLAIM 4, THAT'S THERE, AND I NEED TO DECIDE IT, GO BACK AND LOOK
10 AT THE PAPERS. ANYTHING ELSE?

11 **MR. NICODEMA:** PLURALITY OF COMPONENT CABLES, YOUR
12 HONOR.

13 **THE COURT:** YES, YES. YES, I HAVE THAT ONE, ALSO.

14 OKAY. ANY OTHER -- ANYTHING ELSE I NEED TO DECIDE?

15 **MR. NICODEMA:** I DON'T THINK SO, YOUR HONOR. I THINK
16 WE COVERED IT, AND YOU HAVE BEEN VERY PATIENT WITH US.

17 **MR. MOUNT:** I THINK THAT'S IT.

18 MY ONLY POINT IS I THINK OUR BRIEFING WAS NOT AS
19 CLEAR AS IT SHOULD BE ON THE INDEFINITENESS. I THINK IT WOULD
20 BE HELPFUL FOR US TO ORDER A TRANSCRIPT. I THINK MY REMARKS
21 TODAY WERE PROBABLY MORE HELPFUL THAN THE BRIEF WAS ABOUT THE
22 INDEFINITENESS.

23 **THE COURT:** IS THAT A REQUEST TO PROVIDE A
24 SUPPLEMENT, OR IS THAT A SORT OF SUGGESTION THAT I FOCUS ON THE
25 TRANSCRIPT AND NOT ON THE BRIEFING?

1 **MR. MOUNT:** I THOUGHT -- I THINK THE TRANSCRIPT IS
2 PROBABLY MORE HELPFUL, BECAUSE I THINK OUR THINKING ABOUT IT GOT
3 MORE CLEAR AS WE PREPARED FOR OUR PRESENTATION.

4 **MR. NICODEMA:** I THINK YOU NEED TO FOCUS ON THEM
5 BOTH, YOUR HONOR, BECAUSE WHAT I FOUND IS THAT THERE WAS A SEA
6 CHANGE IN THEIR INDEFINITENESS ARGUMENT FROM THE BRIEF, AND
7 TODAY THE ONLY INDEFINITENESS ARGUMENT I SAW WAS THIS NOTION OF
8 SIMULTANEOUS CONNECTION TO THE POWER SUPPLY HOUSING AND NOT
9 CONNECTION TO THE POWER SUPPLY HOUSING.

10 **THE COURT:** WHAT WE'RE ALL USED TO IS WHEN A PARTY
11 SUGGESTS TO ME THAT THERE'S BEEN A SEA CHANGE, IT'S USUALLY THE
12 PREAMBLE TO A REQUEST TO: I NOW WANT TO RESPOND TO THE NEW
13 ARGUMENT.

14 LET'S ASSUME FOR A MOMENT THAT A SORT OF NEW SLANT
15 HAS BEEN TAKEN BY ONE SIDE OR THE OTHER. THEY'RE NOT PRECLUDED
16 FROM DOING THAT. BUT I UNDERSTAND WHEN I THEN HEAR THE
17 ARGUMENT: WELL, WE DIDN'T ANSWER THAT ISSUE, SO WE WANT LEAVE
18 TO ANSWER THE ISSUE -- IS THAT SOMETHING YOU WANT TO DO?

19 **MR. NICODEMA:** MY INCLINATION WOULD BE, YOUR HONOR,
20 THE PARTIES HAD AMPLE TIME TO BRIEF THIS. WHATEVER ARGUMENTS
21 ARE MADE IN THE BRIEFS ARE THE ARGUMENTS.

22 **THE COURT:** I WILL TELL YOU SO YOU ARE FOREWARNED, I
23 THINK THIS IS A DYNAMIC ENOUGH PROCESS THAT I'M NOT GOING TO
24 TAKE SOME SORT OF ESTOPPEL POSITION AND SAY -- IF I CONCLUDE, AS
25 YOU SUGGESTED, THAT I THINK THERE'S BEEN A SHIFT IN THE

1 ARGUMENT, I'M NOT GOING TO DISREGARD THE ARGUMENT SIMPLY BECAUSE
2 IT WASN'T CONTAINED IN THE BRIEF. SO, IF YOU THINK YOU NEED TO
3 FURTHER RESPOND TO WHAT YOU PERCEIVE AS A SHIFT, I'LL GIVE YOU
4 AN OPPORTUNITY TO DO THAT.

5 **MR. NICODEMA:** ALL RIGHT.

6 **THE COURT:** BECAUSE I WANT YOU TO KNOW I'M NOT GOING
7 TO PRECLUDE IT.

8 I TAKE IT, MR. MOUNT, YOU ARE NOT NECESSARILY BUYING
9 INTO THE IDEA THAT YOUR ARGUMENT IS A NEW ONE, BUT, RATHER,
10 IT'S SLIGHTLY DIFFERENTLY PRESENTED?

11 **MR. MOUNT:** I THINK IT'S MORE CLEARLY PRESENTED. WE
12 WERE TALKING ABOUT THE SECOND END THAT IS NOT A FIXED, WHETHER
13 IT IS IT WAS FIXED TO THE HOUSING OR NOT NECESSARILY THE
14 HOUSING. BUT THAT IS NOT A FIXED UNIT. IT'S EITHER A PLUG,
15 PLUG TO PLUG, WHICH DOESN'T WORK, OR A SOCKET WHICH IS FIXED,
16 AND THAT'S NOT FIXED.

17 SO, I DON'T KNOW THAT IT'S MUCH OF A DEPARTURE, BUT I
18 STARTED TO SEE IT MORE CLEARLY MYSELF AS WE WERE PREPARING FOR
19 ORAL ARGUMENT. I THINK IT'S IN THE BRIEFS, BUT I THINK IT'S
20 MORE CLEARLY UNDERSTOOD --

21 **THE COURT:** WOULD YOU LIKE TO RESPOND IN WRITING?

22 **MR. NICODEMA:** YES, SIR.

23 I JUST WANT TO BE CLEAR. I GUESS THE DEFENDANTS ARE
24 NOT ASKING FOR ANOTHER BRIEF.

25 **THE COURT:** THEY'RE NOT.

1 **MR. NICODEMA:** THEY WANT TO RELY ON WHATEVER THEY
2 SAID TODAY. SO, ONCE I GET THE TRANSCRIPT, I'D LIKE AN
3 OPPORTUNITY TO SUBMIT A SUPPLEMENTAL BRIEF.

4 **THE COURT:** ALL RIGHT. I WILL ALLOW YOU TO FILE A NO
5 MORE THAN -- BECAUSE THIS IS ON A SPECIFIC ISSUE, CAN YOU
6 CONFINE IT TO NO MORE THAN TEN PAGES?

7 **MR. NICODEMA:** YES, SIR.

8 **THE COURT:** ALL RIGHT.

9 AND NOW I KNOW MR. MOUNT IS GOING TO SAY: WELL, NOW,
10 NOW I WANT AN OPPORTUNITY TO BE HEARD ON THIS.

11 **MR. NICODEMA:** OPENED UP A CAN OF WORMS.

12 **THE COURT:** I KNOW IT DOES, BUT I WANT A COMPLETE
13 RECORD. I WANT EVERYONE TO HAVE AN OPPORTUNITY TO TELL ME WHAT
14 THEY THINK THEY NEED TO TELL ME. BUT, IN FAIRNESS, ALSO, TO THE
15 PLAINTIFFS, I DON'T WANT NOW TO ALLOW A REPLY BRIEF.

16 I'M GOING TO GIVE BOTH SIDES AN OPPORTUNITY ON THE
17 INDEFINITENESS ISSUE TO GIVE ME A FURTHER BRIEF, AND I WANT IT A
18 WEEK FROM THE DATE THAT YOU GET THE TRANSCRIPT. YOU DON'T HAVE
19 TO FILE A BRIEF, AND I WILL NOT THINK LESS OF YOU IF YOU
20 CONCLUDE YOU DON'T WANT TO FILE ONE, BUT IF YOU DO FILE ONE, NO
21 MORE THAN TEN PAGES SPECIFICALLY ON THE INDEFINITENESS ISSUE,
22 AND IT'S SIMULTANEOUS.

23 **MR. MOUNT:** THANK YOU.

24 **MR. NICODEMA:** THAT'S FAIR, YOUR HONOR. THANK YOU.

25 **THE COURT:** OKAY. GOOD. THANK YOU VERY MUCH. IT

1 WAS -- IT WENT VERY SMOOTHLY, AND I APPRECIATE IT, AND I
2 APPRECIATE YOUR WORKING TOGETHER, WHICH IS VERY NICE IN THIS DAY
3 AND AGE WHEN SO FEW WORK TOGETHER. SO, THANK YOU.

4 I'LL GO BACK AND DO MY HOMEWORK, AND, HOPEFULLY, NOT
5 LONG AFTER YOU GIVE ME THAT SUPPLEMENTAL SUBMISSION, I CAN IN
6 THE MEANTIME BE WORKING ON SOME OF THESE OTHER ISSUES AND GET
7 SOMETHING TO YOU.

8 **MR. MOUNT:** THANK YOU.

9 **MR. NICODEMA:** THANK YOU, YOUR HONOR.

10 **THE COURT:** THANK YOU.

11 (PROCEEDINGS ADJOURNED.)
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CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C 09-4255 RS, ULTRA PRODUCTS V. ANTEC, INC., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

S/B JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

TUESDAY, AUGUST 24, 2010

**JOAN MARIE COLUMBINI, CSR, RPR
OFFICIAL COURT REPORTER, U.S. DISTRICT COURT
415-255-6842**